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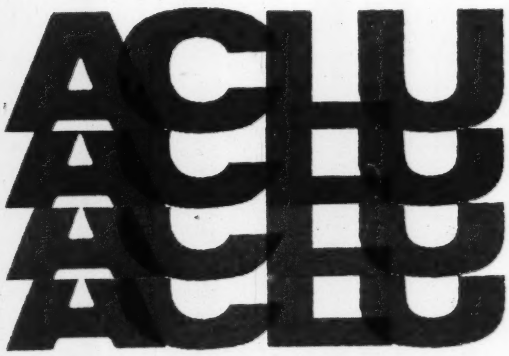

Annual Report
1975

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About This Report

This report describes some selected parts of the work of the American Civil Liberties Union and the ACLU Foundation in 1975. There is no room here to mention the great majority of the 6,000 or so court cases engaged in by the national office and the local affiliates of the ACLU around the country nor the thousands of administrative proceedings and legislative battles on behalf of the freedoms of Americans. And, as is usual in ACLU publications, there is no mention of the names of the thousands of persons who served on the boards of the 400 local chapters of the ACLU, on the boards of the 49 state and regional affiliates and on the national Board of Directors, nor of the thousands of volunteers, lawyers and non-lawyers, nor of the fewer than 400 persons who serve on the paid staff (most of them badly paid) of the ACLU around the country. Their individual efforts are reflected in this report even though any credit is given only to the collective entity, the ACLU.

Responsibility for the work recorded here and the larger amount of work unrecorded also belongs to the 275,000 persons who comprise the ACLU's membership. They contributed over $4 million in 1975. Benefits for ACLU affiliates, gifts by individuals and foundations to the ACLU Foundation and its state affiliates and bequests added more than $3 million. In all, therefore, the ACLU and all its affiliates and the ACLU Foundation and all its affiliates received and spent about $7½ million in 1975. While this was more than in any previous year, the growth barely kept pace with inflation.

To many people inside and outside the ACLU, we are an organization of bewildering complexity. Perhaps this is a product of the civil libertarian's natural resistance to concentrations of power. The ACLU is decentralized to what many would probably regard as a ridiculous extreme. Even so, there is a remarkable cohesion in the work undertaken by the disparate parts of the ACLU. Since it is not our organizational structure that produces this unity, it seems fair to say it is the sense of shared purpose that creates unity out of such diversity.

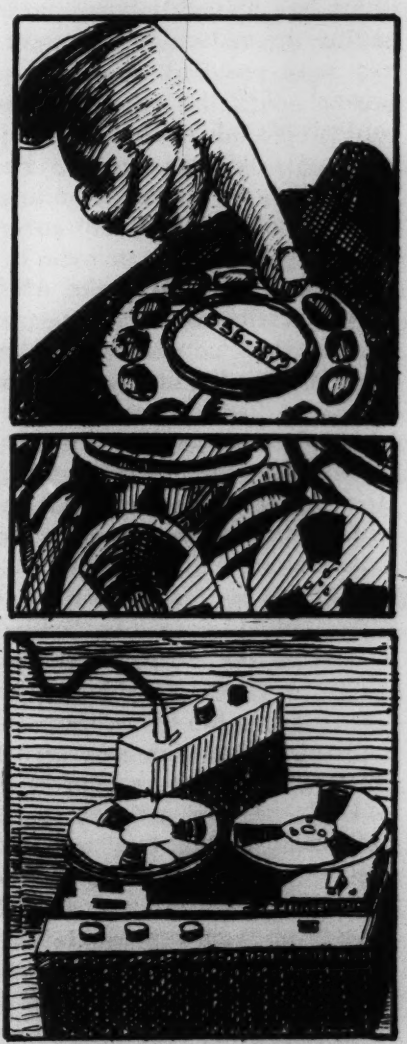
Introduction

by Aryeh Neier

It is difficult to assess 1975.

Perceived optimistically, it could be the beginning of the end for the national security state. Americans now know that their government plotted assassinations and, perhaps, carried them out; that their government systematically opened their mail; that all previous estimates of their government's eavesdropping on their telephone conversations were grossly understated; that their government covered up an expenditure of hundreds of millions of dollars which may have been a giant boondoggle or it may have been a delegation of the war power to Howard Hughes; and that their government spiked people's drinks with LSD, drove them to suicide and never even informed the families of the cause of death.

Now that Americans are informed of the shabby things done in the name of national security, perhaps they will put an end to them. Perhaps.



And perhaps not. Even as the pace of revelations quickens, there are signs that the national security mentality still prevails among the people's representatives, the Congress of the United States. A comprehensive revision of the federal criminal code, S.1, with harsh, new penalties for future Daniel Ellsbergs and Victor Marchettis who disclose government secrets, has the backing of the Ford administration and broad bipartisan support in Congress. A proposal to disclose the size of the CIA's budget—never mind the way it is divided—was able to get the support of barely a third of the members of the House of Representatives in a recent vote.

Perhaps the present moment is analogous to the time two years ago when most of Richard Nixon's abuses were known but Congress was not yet ready to do anything about them. Eventually, constituent pressures and the momentum generated by the House Judiciary

Committee's impeachment inquiry brought an end to the Nixon presidency.

Perhaps the absence of a single villain who personifies the evil to be purged makes late 1975 altogether different from late 1973. That national security establishment may yet succeed in riding out all the embarrassing disclosures. Soon, they may be able to go back to business as usual.

The American Civil Liberties Union has played a large part in getting the nation to the point it has now reached. For the last several years, the ACLU has made control of information a major emphasis. Information, we have contended, is power. If citizens are informed about their government, they have power over it. If Government is informed about what its citizens are doing, government has power over its citizens. It turns the idea of democracy upside down for government to have information—and, therefore, power—over its citizens while its citizens are denied information—and, therefore, power—over their government.

Acting on this philosophy, the ACLU helped persuade Congress to expand the Freedom of Information Act over President Ford's veto. Also, in the immediate aftermath of Watergate, we were instrumental in getting Congress to make a start on privacy legislation. The ACLU has used the Freedom of Information Act to pry loose government secrets. We have given legal representation to Marchetti, Agee and others who have informed Americans about the things done in the name of national security. In court case after court case, the ACLU has challenged the government's political surveillance apparatus. Some of the court cases have won legal restraints on surveillance programs; others have forced discontinuation of the surveillance; virtually all of the court cases have added to what Americans know about their government's propensity to act like Big Brother.

It will be far harder to put an end to the abuses of civil liberty by the national security apparatus than it was to end Nixon's presidency. The Nixon abuses—some of them, anyway—were aberrations. Nixon did not rely on the existing machinery of government to do all his dirty work. Nixon didn't trust the intelligence agencies. He had to have his own secret police, the plumbers. It was their bungling—at Watergate and in the burglary of Ellsberg's psychiatrist—that brought Nixon down.

The covert activities and the surveillance practices of the CIA, the FBI, the Internal Revenue Service and the National Security Agency were not aberrations. These things were done pursuant to national policy and with the approval of all our recent presidents. The end of the Nixon presidency was regarded by most Americans as a return to normal times. The end of the national security state will require a new sense of what is normal.

Although the Vietnam war is only a bad memory to most people, the ACLU continued to devote a great deal of effort in 1975 to aid to some of its victims. We continued to press damage claims for people

injured by the government for protesting against the war. In the two most widely reported court cases, we had a great success and a tragic loss. The great success was in getting a jury to award a total of $12,000,000 to 1,200 of the 13,000 people illegally arrested during protests in Washington, D.C. in May 1971. The tragic loss was in a jury verdict denying any damages to the students crippled and to the parents of the students killed at Kent State in May 1970. The ACLU is appealing the Kent State decision and the government is appealing the Mayday decision.

The results of our efforts on behalf of draft resisters and people with bad discharges from the armed forces were similarly mixed. Several thousand young men still face prosecution for resisting the draft and hundreds of thousands are still stigmatized by bad discharges from the armed forces. The ACLU has been virtually alone in providing them legal representation. While we win most of the cases we take on, we cannot take on all the cases. The Ford clemency program was not the amnesty we sought to provide relief on the wholesale scale it is needed. Unfortunately when the clemency program ended late in 1975, public interest in amnesty was at a low point. Predictably, therefore, the ACLU will still be engaged in a case by case effort on behalf of Vietnam era casualties for some time to come.

Two other ACLU emphases will be with us for many years. We will be challenging denials of civil liberties by large compulsory institutions, and we will be providing assistance to groups previously disenfranchised because of race or sex.

The most notable accomplishment in 1975 in limiting abuses by compulsory institutions was the Supreme Court decision in *O'Connor* v. *Donaldson* on the rights of mental patients. The decision was the culmination of several years of litigation challenging the incarceration of people alleged to be mentally ill in giant institutions without any treatment designed to secure their release.

In the battle for equality, 1975 resembled the last three or four years: there was progress in winning the rights of women and there was regression in securing equality for blacks.

Abortion is a notable example of the advances made on behalf of the rights of women. To all intents and purposes, the legal struggle for a woman's right to an abortion is over. The Supreme Court affirmed the right at the beginning of 1973. In the succeeding three years, there were a great many efforts in Congress, in the state legislatures and in the administrative practices of hospitals and health departments to overturn or erode the Supreme Court decision. One by one those efforts are being defeated. Even hospitals operated by the armed services are now complying with the Supreme Court decision. Some skirmishing will continue but the ACLU—which has led the legal struggle for a woman's right to secure an abortion from start to finish—can now claim victory.

School segregation is the most obvious example of the failure to

secure equality for blacks. When the South resisted integration, the North offered moral and legal leadership and—with difficulty—forced the South to give blacks equal rights. Now that the North is resisting school integration, there is no one offering moral leadership. Not the Supreme Court, which has put large obstacles in the way of metropolitan desegregation. Not the Congress, which is busy enacting anti-busing measures. Not the President, who encourages resistance to integration. Not the other presidential candidates, none of whom has made racial equality a campaign issue. In Atlanta, Los Angeles, Louisville, Wilmington and other communities, the ACLU has led the legal struggle for integration of the schools. But we need allies, and they are few and far between.

1976 will be the 200th birthday of the Declaration of Independence. It would be nice to look back at the same time next year and celebrate 1976 as an unmixed advance for civil liberties.

Political Surveillance

In 1974 ACLU litigation unearthed crucial facts about Richard Nixon's political abuses of various federal intelligence agencies. These facts contributed to one of three Articles of Impeachment voted by the House Judiciary Committee. In 1975 ACLU litigation produced evidence that these same intelligence abuses extend far beyond the Nixon Administration and require wholesale legislative reforms.

Early in 1975 two ACLU lawyers appeared as lead-off witnesses in congressional hearings on intelligence abuses and presented evidence about a variety of surveillance activities which have recently come to light in ACLU litigation against the FBI, the Army, the CIA, the Secret Service, the IRS and a half-dozen state and local police agencies. These included the continuous warrantless wiretapping for 25 years, on the instructions of successive attorneys general, of an unidentified group of American citizens; the FBI's installation of warrantless taps on domestic activists after a 1972 Supreme Court decision banning such taps; the opening of mail by military intelligence; inspections of bank records, credit reports and other private records by the FBI and Secret Service; and the widespread use of undercover agents among political groups by many intelligence agencies.

New revelations continued throughout the year. In March the FBI was forced to disclose in an ACLU suit in Philadelphia federal court that it had conducted a counter-intelligence program ("COINTELPRO") against Muhammad Kenyatta, a civil rights leader in Mississippi in the late 1960s, by sending him a threatening letter over the signature of a bogus organization, and by fabricating derogatory information about him which was disseminated to church groups sponsoring Kenyatta's activities.

Wiretapping figured prominently among the significant new disclosures. In April the government revealed in an affidavit filed in ACLU litigation challenging Army surveillance that 23 separate federal agencies currently engage in wiretapping, despite testimony in 1974 by former Attorney General Saxbe that all federal wiretapping is done by the FBI. In another lawsuit brought by the ACLU on behalf of Morton Halperin, the former National Security Council staff member who was tapped for 21 months, depositions of FBI and White House officials have revealed that the FBI employs no standard at all for limiting interceptions on a "national security" wiretap and fails to keep records on many of these interceptions. The Halperin case also resulted in a court order requiring former President Nixon to submit to an oral deposition over his claim of executive privilege, because of evidence that Nixon had ordered summaries of the tap to be sent to his political assistant, H. R. Haldeman, and had personally directed the cover-up and withholding of the tap from the court in the Ellsberg

prosecution.

Through another lawsuit, the ACLU learned that an affiliated organization, the Lawyers Military Defense Committee (LMDC) had been infiltrated by an Army undercover agent who had obtained access to legal defense documents and strategies for courts martial. This infiltration occurred after the ACLU had filed a suit challenging Army surveillance of American civilians in West Germany, where the LMDC office is located. Contemporaneous reports of Army intelligence officers indicate that although they knew the infiltration might be illegal they decided to risk attempting it because of its "extreme value in planning counteractions" against LMDC and the ACLU.

In addition to these and other dramatic disclosures of the scope of political surveillance, there were several significant victories in ACLU litigation, and a variety of additional lawsuits were filed. The victories included a federal court of appeals decision granting standing to a New Jersey high school girl to challenge an FBI "mail cover" on the Socialist Workers Party which resulted in her investigation when she wrote to the party for information to use in a class paper; a California Supreme Court decision enjoining the state from placing police undercover agents in state university classrooms; a federal court of appeals decision sustaining a suit by seven Philadelphia residents against Mayor and former Police Chief Rizzo for widely disseminating dossiers on their political activities; and a Brooklyn federal court decision denying the government's motion to dismiss a suit by former Congressman Allard Lowenstein alleging that the FBI assisted the 1970 campaign of his opponent by supplying derogatory information about Lowenstein and that the IRS audited Lowenstein's tax returns at the request of the White House, which had placed him on the "Enemies List."

New suits initiated in 1975 challenge the political surveillance activities of police departments in Chicago, Houston and Kansas City, as well as warrantless mail opening and cable interceptions at the federal level by the CIA and the National Security Agency. In addition, a class action suit was filed against IRS on behalf of all persons and organizations who were subjected to tax audits because of their "political activist" behavior.

Privacy

In 1975 two important federal privacy statutes went into effect: the amended Family Education Rights and Privacy Act (the Buckley Act) and the Privacy Act of 1974. Under both these laws individuals have the right to inspect their files, correct errors, and to some extent control the dissemination of their records.

The Buckley Act, which applies to student records in elementary and secondary schools and colleges, was amended in the last days of the 93rd Congress to allow students to waive their right

to see letters of recommendation written on their behalf. The ACLU has argued that inclusion of a waiver provision in the law would only encourage subtle coercion by schools and colleges upon students to waive their rights "voluntarily" — and in fact this appears to be happening at many institutions across the country.

The Privacy Act of 1974 regulates the record-keeping practices of the federal government and places restrictions on new uses of the Social Security number by federal, state, and local governments. During August and September federal agencies published thousands of notices describing their record systems and the procedures to be followed by individuals who wish to inspect or correct their files. The Act also established a two-year Privacy Protection Study Commission, charged with developing legislation dealing with privacy problems not covered by the 1974 Act. The ACLU will be making frequent presentations to the commission, and will also encourage the public to exercise their rights under the Privacy Act.

Meanwhile, the ACLU has been pressing hard in the Congress and the state legislatures for a wide range of privacy bills, dealing with such matters as arrest record expungement, dissemination of criminal justice information, credit records, bank and tax records, medical records, polygraph tests, and state, local, and private databanks. There have been some successes — passage of an arrest record expungement law in Maryland and a law imposing "fair information practices" on state agency record systems in Utah, and substantial progress toward congressional action to protect the confidentiality of bank records and tax returns — and also some stunning disappointments, such as the eleventh-hour veto by California's governor of a strong information practices law which would have regulated record maintenance and dissemination by state agencies and allowed individuals to examine and correct their files.

Of the numerous ACLU suits challenging the dissemination of arrest records, several have resulted in important decisions upholding the right to privacy. In *Davis* v. *Paul*, a Court of Appeals ruled against the circulation of a flyer entitled "Active Shoplifters" including the names and photos of persons who had never been convicted of a shoplifting offense. (This decision will be reviewed by the Supreme Court.) In Wisconsin, a federal court ordered the recall of police circulars labelled "Known Members of Motorcycle Gangs;" again, none of the 54 persons listed had been convicted of the offenses charged in the circular. In a third case, ACLU was successful in forcing the FBI to expunge its 24-year-old arrest record of a woman against whom all charges had been dismissed.

The Supreme Court of Alaska ruled that state's law forbidding the possession and use of marijuana by adults in their homes to be a violation of the right to privacy. And in California, the Supreme Court ruled that law enforcement officers may not have

access to a person's bank records without a court order. In New York, a federal court struck down a law requiring the registration, and maintenance in a central computerized file, of the names of all patients receiving certain kinds of "dangerous drugs" by prescription. All three cases were supported by ACLU affiliates.

Secrecy and National Security

Events of recent years have brought out only too clearly that much of the function of government secrecy is not to protect the national security but to avoid skeptical congressional and public questioning of executive policies. It is easier to respond by claiming that the reasons for a given action are too secret to be discussed. Secrecy in the name of national security, however, goes far beyond merely keeping quiet; it embraces outright lying, "disinformation" tactics, and concealing illegal actions.

In spite of the fact that Congress and the public are becoming increasingly immune to the tactic of invoking "national security" to conceal government actions, the executive branch continues to guard its prerogatives and is trying to restore its control over information. S. 1, a bill drafted by the Nixon Justice Department, contains provisions which would create an "official secrets act," expanding espionage laws so broadly that virtually any discussion of national security issues could fall within its scope. The ACLU spent a good deal of time in the last four months of 1975 fighting passage of S. 1.

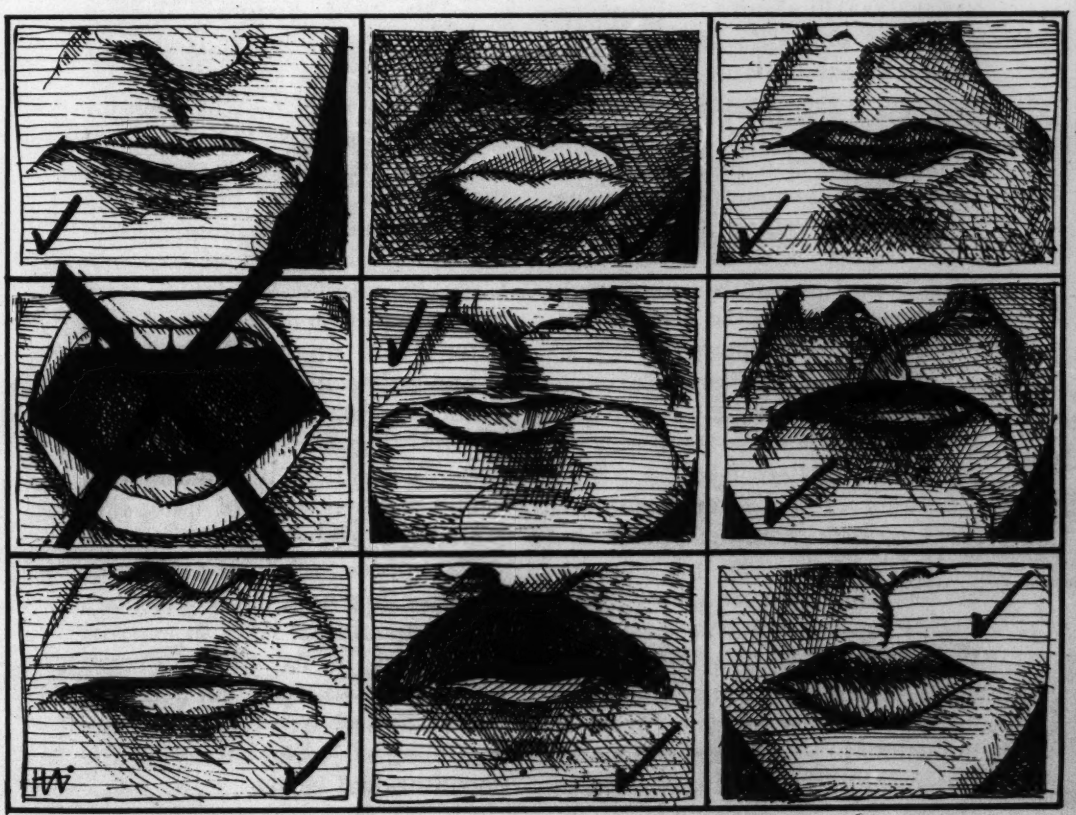
During the year a number of promising inroads into exclusive executive control of information were begun under the amended Freedom of Information Act. The amended Act, which went into effect in February provides for the first time a right to judicial review of classified information. The ACLU Project on National Security and Civil Liberties has filed more than 40 requests for documents relating to foreign policy, national security, and civil liberties.

Compliance with the Act by government agencies has varied between being largely cooperative (Department of Defense) to being largely uncooperative (National Security Council and CIA). But it is in upcoming court decisions that it will be determined how the Act will work out in practice. The Project on National Security and Civil Liberties has so far had half a dozen suits filed in its behalf in order to obtain the release of documents. One of these, the suit for the Colby Report to President Ford on CIA domestic operations was successful in releasing the report and is now being pressed for legal fees and possible sanctions for arbitrary withholding. Still in litigation are ACLU suits for deletions from transcripts of Kissinger background press conferences on the SALT agreement (which were originally unclassified); for the CIA budget for the fiscal year 1976 and the CIA expenditures for the fiscal year 1974; for the materials on assassinations given by the CIA to the Rockefeller Commission; and for National Security Actions 10 and 10/2.

First Amendment and Censorship

The ACLU's primary commitment to protection of free speech continued to consume a substantial part of its resources during 1975. After the increasingly fierce assaults upon the First Amendment during the Nixon Administration, 1975 seems to reflect a more benign attitude by government officers toward freedom of speech. As always, however, the results are mixed and the prognosis guarded.

The year's major setback was in *Knopf* v. *Colby*, the second half of the saga involving Victor Marchetti's censored book about the CIA. The Supreme Court refused to review a decision by the U.S. Court of Appeals for the Fourth Circuit which allowed the CIA to censor Marchetti's writing. The Fourth Circuit, in approving 168 deletions from the book, held that the CIA could prove the fact of classification merely by asserting that material was of the sort which should be classified. Though the Marchetti case was lost in court, the Marchetti book, published with the 168 empty spaces, became a bestseller and contrib-



uted to the public's demand for investigation of the CIA.

In a major First Amendment case litigated by the Union, *Bigelow* v. *Virginia*, the Supreme Court reversed the conviction of the editor of an underground newspaper for allowing publication of an advertisement for a New York abortion referral service. The Court held unconstitutional the Virginia statute prohibiting such advertisements, and severly narrowed the so-called commercial advertising doctrine which limited the amount of First Amendment protection given to commercial ads.

A jury in the District of Columbia awarded a total of $12,000,000 to about 1,200 persons who had been illegally arrested during a peaceful anti-war demonstration on the steps of the Capitol Building in May 1971. The purpose of the award of damages is to reimburse the demonstrators for the damage done to their First Amendment rights and to discourage government officaials from invading those rights in the future. The government has appealed.

The ACLU of North Carolina was less successful in a suit brought to redress the injury to persons expelled from a "Billy Graham Day" rally in Charlotte in 1971 which was attended by Richard Nixon. The persons expelled included those who carried anti-Nixon and anti-war signs, and those who looked like "hippies" to local police and secret service agents. After winning a series of important pre-trial legal rulings on the culpability of leading White House figures, including H. R. Haldeman, a jury brought in a verdict for the defendants after deliberating only two hours.

In *Severy* v. *Board of Education*, money was again the instrument for protecting the First Amendment. In that case, Bruce Severy, a high school English teacher in North Dakota, was not rehired because of objections by the board of education to some of his assigned readings. In fact, the assigned copies of Kurt Vonnegut's *Slaughterhouse Five* were burned in the school furnace. Just prior to trial, a settlement was reached; the board of education paid Severy $5,000 and agreed to allow the banned books to be taught in the 11th and 12th grades.

The 1974 Federal Election Campaign Act was challenged by a diverse group of plaintiffs including Eugene McCarthy, Senator James Buckley and the ACLU. At issue are the validity of provisions limiting the amount of campaign contributions by individuals, limiting the total amount of expenditures by candidates for federal office, requiring disclosure of contributors to all candidates, providing public financing for Democratic and Republican presidential campaigns, and establishing a Federal Elections Commission to monitor all aspects of campaign activity for all federal offices. The ACLU opposes all those provisions because they limit the electorate's First Amendment right to support candidates of its choice. In an accelerated process, the Supreme Court heard argument at the beginning of November on all the constitutional issues.

Law and Order

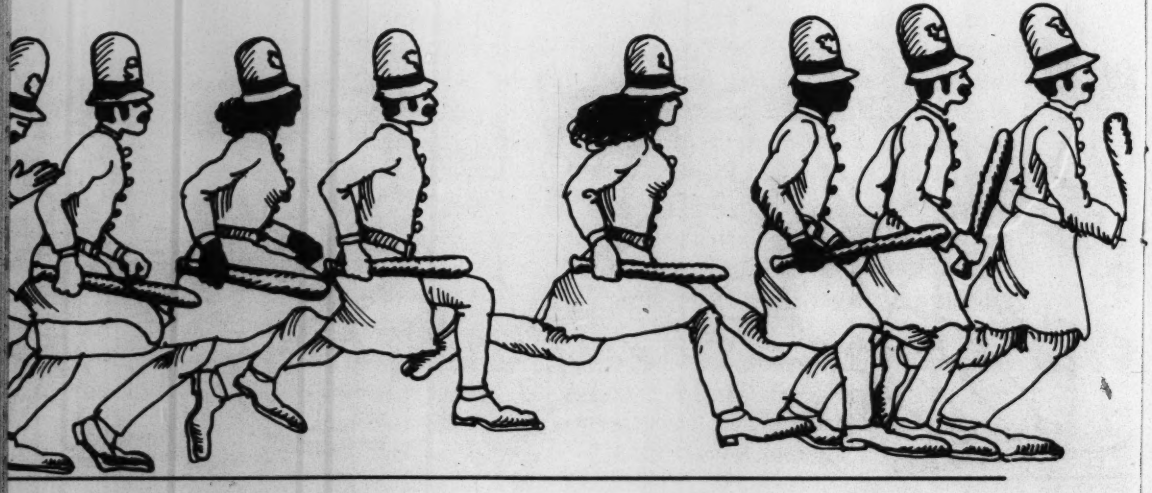
Juries played a significant role — positive and negative — on the law and order scene this past year. Perhaps the most dramatic ACLU victory against official lawlessness in recent years came when a federal jury in Washington, D. C. awarded $12,000,000 damages to approximately 1200 demonstrators who had participated in one of the May Day events in 1971. Unfortunately, the opposite result was reached in the Kent State damage suit against Ohio public officials and National Guard officers. After a trial lasting several months, during which the trial judge restricted ACLU efforts to place the actual killings in their larger perspectives, the jury returned a verdict for all the defendants. The ACLU will take full appeals.

The use of such damage suits as a method to redress the denial of civil liberties by police officials is an increasingly important weapon in the ACLU arsenal now that the Supreme Court has continued to restrict the power of federal courts to grant injunctions against enforcement of unconstitutional state and local statutes and ordinances. This past Term the Court further limited the availability of federal judicial relief in such circumstances. The one exception was an ACLU case where the Court agreed with our argument that two Dallas men fined for violating a local loitering ordinance could thereafter sue in federal court to declare the ordinance unconstitutional. To further strengthen the potency of the civil rights damage action, the Union has also urged the Court in another case to ease the immunity from suit afforded to local prosecutors.

After a relatively quiet Term last year, law and order issues, in which the Union is participating, will once again pre-occupy the Supreme Court this coming year.

Most important is the capital punishment question, which will be re-argued again this year. Equally vital is the continued future of the exclusionary rule as the primary method for protecting Fourth Amendment rights. For the last few years, prosecuting officials have accepted the invitation of certain Justices to mount a challenge against the exclusionary rule. This Term, the Court has agreed to decide whether state prisoners should be allowed to seek federal habeas corpus relief on the ground that their convictions resulted from illegally seized evidence. The Union' *amicus curiae* brief argues that without federal court review of state search and seizure practices, Fourth Amendment rights will be vulnerable to wholesale denial. In a similar vein, the Union has joined with other groups to urge that the Court uphold a lower court ruling requiring the Philadelphia Police Department to establish a review board for handling citizen complaints of systematic police abuses.

At the local level, affiliates continue to combat police excesses by bringing suits on behalf of the victims of such police misconduct. For example, in New Mexico, the ACLU successfully prosecuted a false arrest suit and secured damages against three members of a local sheriff's department. And in Vermont, the filing of a large damage action on behalf of the family of a young man killed by police as a suspected burglar drew the wrath of the International Brotherhood of Police and sparked a short-lived attempt by the state legislature to "investigate" the Vermont Civil Liberties Union.



Amnesty

During 1975 the Project on Amnesty shifted its principal concern away from the public advocacy of amnesty toward efforts to influence the governmental processes concerned with amnesty.

The announcement of President Ford in August 1974 that he would institute a clemency program was a tribute, however left-handed, to the work of the previous three years in putting amnesty on the national agenda. An intensive effort to influence the shaping of the clemency program — by discussions with the president's staff, submission of materials, attempts to have a high-level delegation see the president — proved fruitless.

The clemency program itself proved a failure. It excluded from eligibility most of the 750,000-or-more people who need a post-Vietnam amnesty; it attracted less than 15 percent of those who *were* eligible; it offered to most of *them* useless and falsely advertised remedies in exchange for hurtful and demeaning conditions. Tens of thousands of young men and women who resisted the draft or the brutalization and racism of the military, who were subjected to court-martial and military discharge practices of established lawlessness and inhumanity and were cashiered out of the military with lifelong stigmas and disabilities, or who fought at home against the destructive ten-year war, continue to bear profound wounds. Only a universal and unconditional amnesty will even begin to heal these wounds.

While the clemency program was in operation, the project undertook to explain the program to war resisters and veterans and to counsel and represent any of them who desired to clear their war-related legal difficulties within or without the clemency program. We quickly organized a two-member legal staff at Fort Benjamin Harrison, Indiana, the site of the military clemency processing center; a two-member legal staff in Washington, D.C. at the Military Discharge Review Project, to deal with military discharge problems and related matters; and a two-member litigation staff in New York, to represent war resisters before the clemency board and to defend draft indictees.

Our efforts assured individual war resisters and veterans that the ACLU advocates their interests as a class with respect to legal disabilities arising from their relationship to the war, and that the ACLU will take direct action in their personal cases where it can.

The project also monitored the administration of the clemency program and challenged any aspects which violated the constitutional rights of the war resisters. We held seven major press conferences demanding the correction of abuses in the program and met on numerous occasions with members of the clemency board and its staff. Our efforts have firmly established in the minds of the public, the media, and the government that the clemency program was a failure. We have

thereby laid the basis for future action on amnesty.

Finally, the project continued to urge the executive and legislative branches to recognize the futility of the clemency approach and to enact a genuine, broad, and unconditional amnesty. We testified at hearings before Senate and House Judiciary subcommittees, briefed members of Congress and their staffs, and drafted a model amnesty statute. As a result, congressional interest in framing amnesty legislation has grown in dimension and sophistication.

Though a general amnesty for the war resisters of the Vietnam era is not yet in sight, the work of the project during the past year has placed the issue of amnesty firmly on the agenda of American public concerns.

Equal Protection

Since the 1950s, our major metropolitan areas have witnessed the rapid growth of white suburban communities surrounding increasingly black central cities — with the attendant establishment of suburban/urban dual school systems. In the wake of a 5-4 Supreme Court decision in 1974, reversing a court-ordered metropolitan desegregation and school-district merger plan, the field of metropolitan school desegregation has been largely inherited by the ACLU. In metropolitan cases brought in Louisville, Wilmington, Atlanta and Buffalo, the ACLU has been documenting the evidence of governmentally enforced patterns of metropolitan segregation not only in the school systems but also in housing. In the area of housing, ACLU attorneys have demonstrated the racially segregative effects: of public housing policies and federally subsidized low-income housing policies which have confined such housing to the central cities rather than distributed such housing throughout the metropolitan areas; of exclusionary zoning policies which have caused high density residential zoning in the central cities and low density residential zoning in the suburbs; of land use planning policies which have separated black and white neighborhoods with natural barriers (such as parks and rivers) and unnatural barriers (such as highways and commercial developments) and which have limited mass transit to the central cities; of discriminatory real estate practices which have been given tacit approved by state licensing agencies; of urban renewal policies which have caused the displacement of black families and their relocation in inexpensive segregated housing; and of FHA and VA policies which caused segregated neighborhoods through the refusal to provide home mortgages in other than "homogeneous" neighborhoods. Upon such evidence such as this, the ACLU has won metropolitan desegregation orders in Louisville and in Wilmington; similar ACLU cases involving Atlanta and Buffalo are being prepared for trial.

The ACLU has also become increasingly active in challenging pervasive practices of employment discrimination. In *Stamps v. Detroit Edison Co.*, a case which is expected to be reviewed by the United States Supreme Court, the ACLU won from the trial court the first major award of punitive damages (4-¼ million dollars) in any employment case in the country. Moving toward trial are three other major employment cases challenging the 200 licensing examinations used to screen out blacks and Hispanics from teaching in the New York City public schools, the rampant sex discrimination in the Los Angeles Police Department and the pervasive sex discrimination in the Philadelphia Police Department.

Recognizing that more than fifty police departments have been successfully sued for sex or race discrimination in recent years, and that our police departments have received more than one billion dollars in federal funding in the past few years from the Justice Department's Law Enforcement Assistance Administration (LEAA), the ACLU in the fall of 1975 filed a national class action suit seeking to disengage the federal government from participating in the discriminatory practices of those police departments — by forcing the LEAA to terminate its federal funding to discriminatory police departments. Filed on behalf of the National Black Police Association, the International Association of Women Police,. six discriminated against blacks, and six discriminated against women, *the* lawsuit also seeks twenty million dollars in damages from named officials of Justice and of the LEAA.

Southern Justice

Southern Justice seeks to integrate the instrumentalities of law in the South by challenging juries which underrepresent minorities, discriminatory jury selection procedures, bar examinations and procedures which have adverse racial impact by screening out a disproportionate number of black applicants, prisons and jails which distinguish between inmates on the basis of race, and laws which though racially neutral on their face are discriminatory in their application.

Juries: Affirmative jury suits to secure equitable representation of minorities on jury lists are a vital part of Southern Justice. During 1975 the ACLU was actively involved in 31 suits in five southern states attacking discriminatory selection procedures and exclusive grand and trial juries. The law of jury selection is reasonably settled and cases continue to reaffirm the basic principles which are applicable. However, jury selection officials continue to apply arbitrary standards for jury service with the result that blacks and women remain underrepresented on grand and trial juries in a substantial number of jurisdictions in the South.

Bar Exams: Southern Justice litigation involves a continuing challenge to the administration of bar exams in Georgia and South Carolina on the grounds of their adverse racial impact. In Georgia summary judgment for the defendants was granted by the trial judge and was affirmed 2 to 1 by the court of appeals on August 20, 1975. The dissenting judge, however, adopted the plaintiffs' analysis, and concluded that a prima facie case of racial discrimination had been made and that continued use of the bar exam could only be justified by a showing of its job relatedness. The bar litigation is still pending but it has had an ameliorating impact upon the administration of bar exams. Of the 18 plaintiffs whom the ACLU initially represented in Georgia, a dozen have retaken the exam and been admitted to practice.

Other Southern Justice litigation attacking racial bias in the administration of the law includes: *Abbott* v. *Theford*, a suit which seeks reinstatement for a juvenile court employee dismissed by his judge for filing suit to integrate a state children's home.

Frierson v. *West*, an attack upon South Carolina's lay magistrate system and state disorderly conduct and breach of the peace laws which are alleged to be discriminatorily applied on the basis of race.

ACLU v. *Bozardt*, a suit alleging that state bar disciplinary procedures are being used to discourage the activities of the ACLU and to retaliate against a cooperating attorney for her assistance to black medicaid recipients sterilized or threatened with sterilization by their doctor because of their welfare status and the fact that they had three or more children.

Baggett v. *Hartman*, an action to compel a Georgia probate judge to issue a marriage license to an interracial couple.

Voter Law

The ACLU has long been active in the area of voter law. It sponsored the *Reynolds* v. *Sims* litigation which established the one-person one-vote principle, a case described by Justice William O. Douglas as the most significant decision of the Warren Court. Using *Reynolds* v. *Sims* and the concept of equality of voting power as a touchstone, the ACLU in a variety of other lawsuits has attacked barriers to voter registration and sought to ensure that all citizens have equal opportunities to qualify, run and be elected to public office.

The following cases from the ACLU's current docket are representative of the work of the Voter Law Project and its particular concern with the rights of minority voters.

Nevett v. *Sides*. After finding that Fairfield County, Alabama's

use of multi-member districts diluted black voting strength, the court adopted plaintiffs' single-member district plan on June 6, 1975. At least four of the nine new districts will be majority black.

Cleveland v. *Reese.* As a result of this litigation the South Carolina Democratic Party conceded that the full state ballot, which denies voters the opportunity to vote for selected candidates, was unconstitutional and instructed all county and state party officials to refrain from using it.

Corder v. *Kirksey.* Pickens County, Alabama, has a 41.7 percent black population but no black elected officials because of its system of at-large voting. On January 23, 1975, the district court entered an order requiring the county's board of commissioners and board of education to seek new apportionment plans. The court retained jurisdiction until those plans are adopted, at which time their validity will be contested in the district court and through procedures established by §5 of the Voting Rights Act.

Riddell v. *The Democratic National Party.* The court of appeals declared unconstitutional a Mississippi statute which gave exclusive use of the name "Democratic" to one political organization. This means that the predominantly black party in Mississippi which had its roots within the Freedom Democratic Party and which has twice been

seated by the Democratic National Party may now legally function within its home state. The state must provide polling places for this party and its members may gain access to the ballot as candidates of their party rather than being forced to run as independents.

Sumter County Democratic Executive Committee v. *Dearman.* A suit to compel white candidates to qualify through newly elected black party officers. The complaint involves the scope of §5 of the Voting Rights Act and argues that whites informally developed a system of qualifying to avoid the authority of black officers and that the change was not submitted for approval under the Voting Rights Act. The fifth circuit reversed a dismissal of the complaint on June 23, 1975, and concluded that a three-judge district court must be convened to hear the case.

DeLee v. *Branton.* Although Dorchester County, South Carolina, is approximately one-third black, no black in the history of the county prior to this litigation had ever been elected to any county-wide offices. In early 1974 the district court declared the county apportionment unconstitutional and directed that new legislation be enacted. A single-member district scheme was adopted in 1975. Reregistration of voters was ordered done by mail without requiring personal appearances before the local board. Elections were held during August, 1975, and a black candidate was elected to the County Council.

It would be a mistake to suggest that white voters never support black candidates in the deep South. Dr. Vasco A. Smith was elected to the county governing body in Shelby County, Tennessee in May of 1973, even though he is black and ran at-large in a county which is 67 percent white. There are other examples of coalitions between black and white voters who have elected black candidates, *e.g.*, the elections of Andrew Young and Maynard Jackson to congressman and mayor in Georgia. However, one need only look at the roster of black elected officials in the South to conclude that historic block voting patterns by whites persist and that the promise of equal participation in the elective process for minorities remains largely unfulfilled.

The Voting Rights Act and favorable court decisions have accomplished much, but most of the work of securing full participation of all citizens in the political process remains to be done. The task will not be easy, for if the days of simple discrimination are gone, the days of correspondingly simple lawsuits to end it are also gone. Discrimination is more subtle and problems of proof involve a presentation and array of facts unheard of during the early days of civil rights litigation. Voting rights litigation generally involves not merely an analysis of voting patterns and practices but the documentation of the role of race in the total life of the jurisdiction — in employment, public education, economics, housing, municipal services, juries, health care, political appointments, and more.

Juvenile Rights

In most parts of the country, a child can be taken from his or her parents as a result of an arbitrary decision by a public official. No showing of emergency, is needed. There is no obligation to pursue less drastic alternatives in the form of services in the home. No hearing is required. Once removed from the parents, the child can be shuttled in and out of institutions and foster homes.

If foster parents develop an attachment to a child who has been with them for a long period, they are not entitled to due process before the child is removed from them. For the most part, no serious effort is made to obtain a permanent adoptive home for these children. If children run away from home, are disobedient to parents, are truant from school, stay out late at night, or associate with bad companions, they can be arrested and sent to prison. They are likely to stay in prison longer than children who commit crimes against property or crimes of personal violence.

Because of state laws and practices denying rights to children, more than 400,000 children are now condemned to the instability of foster care. Several hundred thousand children are arrested each year for offenses which would not be crimes if committed by adults. More than half the 65,000 children in long term detention are incarcerated for status offenses.

More than 200 ACLU court cases challenge the denials of rights affecting children. A few victories were won in 1975. Virginia can no longer take children from their parents without standards or without due process. A federal court decision upholding the arbitrary removal of children from their parents by the state of Iowa was overturned by a U.S. Court of Appeals. Children in New York institutions can no longer be held in solitary confinement. The Supreme Court ruled children cannot be suspended from school without the right to a hearing.

There were also losses, most notably the Supreme Court's decision upholding the right of school authorities to beat children, For the most part, however, the children's rights cases are unresolved. This is a relatively new area of ACLU emphasis, although it is now consuming a great deal of effort and energy. The court cases are complicated and time consuming. Many of the cases are bogged down in difficult jurisdictional questions made more difficult by judicial reluctance to deal with the issues. Definitive decisions in the most important of the court cases are still years away.

A few examples of on-going cases include:

Joyner v. *Dumpson*. This suit challenges a statute requiring that any child who needs services outside his home and whose family is too poor to pay for such services cannot receive services at public expense unless the parents agree to give up custody of the child.

Brown v. *Allerton*. This suit challenges the committment of children to mental hospitals as "voluntary" placements. The voluntariness is that of the parents. For these children there is no right to counsel and no proceeding of any kind.

Child v. *Beame*. This suit was filed on behalf of approximately 5,000 children who demonstrably no longer have any relationship with their natural parents but are being shifted among foster homes by agencies which retain custody over them. The agencies are making no significant efforts to have the children adopted.

In 1976, the ACLU will publish a handbook on *The Rights of Children* and a revised version of its handbook on *The Rights of Students*.

Mental Patient Rights

The Supreme Court decision in *O'Connor* v. *Donaldson* was one of the year's most important victories for civil liberties. It directly affects the rights of hundreds of thousands of persons held in mental hospitals against their will

The *Donaldson* case was originally brought by the ACLU Foundation and was later joined by the Mental Health Law Project. The Supreme Court's decision in *Donaldson* says that a non-dangerous person cannot be held in custody without treatment. It leaves open the question of whether "dangerous" people can be confined or whether a person can be confined if given adequate treatment.

The ACLU and the MHLP are mapping plans for nationwide implementation of the *Donaldson* decision. This will consume a great deal of ACLU effort over a period of several years. In the wake of *Donaldson*, the ACLU is revising its handbook on *The Rights of Mental Patients*. A separate book on *The Rights of the Mentally* Retarded will also be published by the ACLU in 1976.

Together with two other organizations, the ACLU Founda-

tion sponsors the Mental Health Law Project. ACLU and MHLP cases also involve standards for commitment to mental hospitals, rights within hospitals, rights to release, rights of patients to see their own files, rights to prevent others from seeing their files, rights to services in the community and rights of ex-patients to employment.

In another major victory, during the year the New York CLU entered into an agreement with New York State for the implementation of a series of standards for the care of the mentally retarded. The agreement arose from a suit challenging conditions at the largest institution for the mentally retarded in the country, Willowbrook.

According to the decree, Willowbrook, overcrowded with 5,209 residents when originally sued, will be reduced to 250 beds within six years. Within the year 200 new community placements will be established to take care of residents transferred out of the institution. The decree also stipulates that each resident must be provided with an individual plan of care, education and training, including daily program activities and adequate medical and nutritional services.

Women's Rights

Challenges to pregnancy discrimination in employment benefit programs have emerged as a major focus of women's rights over the last year. The ACLU women's rights project has identified eighteen state unemployment insurance statutes which arbitrarily discriminate against pregnant women and is encouraging legislative and litigation challenges to these laws. The project has filed a petition for a writ of certiorari to the U.S. Supreme Court in *Turner v. Department of Employment Security and Board of Review of the Industrial Commission of Utah* to have the Utah statute which conclusively presumes that every pregnant worker is unfit for gainful employment at the end of the second trimester declared unconstitutional. NYCLU and the project have filed a similar charge in New York where the discrimination against pregnant claimants is the result of administration policy and practice rather than statute. The project will also file a challenge to a Veteran's Administration regulation excluding pregnancy from the physical conditions for which veterans are eligible for treatment.

Employer disability plans which exclude pregnancy related disabilities are a major source of discrimination against female workers. The project has consistently maintained that complaints challenging pregnancy discrimination as sex discrimination were actionable under Title VII of the Civil Rights Act and were not foreclosed by the Supreme Court's ruling in *Aiello* that under the 14th amendment pregnancy discrimination is not necessarily sex discrim-

ination "as such." This issue will be decided in the October term of the Supreme Court in a case in which the project has filed an amicus brief.

The unanimous Supreme Court decision in *Weinberger* v. *Wiesenfeld* was a major victory for women's rights and the project. The Court held that a widower, caring for the minor child of a deceased wage earner, could not be deprived of "mother's" benefits solely on the basis of his sex — especially since the deceased female wage earner had paid into Social Security on the same basis as a male wage earner and was entitled to the same protections for her family as similarly situated men. Following the lead of *Wiesenfeld*, three district courts ruled on project cases challenging the Social Security provision requiring husbands (but not wives) to prove they were receiving at least one-half their support from their wives in order to receive husband's insurance benefits. All three courts declared the provision unconstitutional. The government will probably appeal the cases on the merits and we will appeal the denial of injunctive relief.

One of the most publicized of the project's cases has been *King* v *Sardis*. This action, filed with the Equal Employment Opportunity Commission, alleges discrimination by most of New York's finest restaurants in their refusal to hire female waitresses. There are indications that some of the defendant restaurants wish to discuss settlement. A lawsuit will be filed in federal court if a full and satisfactory settlement is not reached. Another employment discrimination issue to be litigated is the provision of lower retirement benefits to retired women employees than to retired men. The

project will be challenging the TIAA-CREF pension system, now used by over 2,000 colleges and universities, in a major Title VII class action.

The final regulations implementing Title IX of the 1972 Education Amendments have been approved by Congress and the President. The project has published an extensive packet of materials on the effect these regulations will have on sex discrimination in athletics and physical education programs. Affiliates have also been devoting significant energies to this area; the project will continue to work to insure enforcement of the regulations and to assist litigation efforts.

Abortion

More than two years have passed since the Supreme Court decided *Roe* v. *Wade* and *Doe* v. *Bolton*. Those cases of course guaranteed women the right to seek, and physicians the right to perform, abortions during the first six months of pregnancy. Continuing legal questions about the meaning of the Court's decisions have been resolved favorably in virtually all of the 40 to 50 cases brought since 1973. The lower federal courts have ruled that public hospitals may not refuse to permit abortion; that state welfare officials must pay for the abortions desired for poor women; and that states could not require parental or spousal consent for abortions. The Supreme Court indicated at the beginning of its October term in 1975 that it would hear the complete argument in a case from Missouri involving a state law that incorporates most of the repressive features of anti-abortion legislation all over the country. This case for example is the only case that has upheld the constitutionality of spousal and parental consent requirements. The Court has enjoined enforcement of the state law pending appeal and counsel are cautiously optimistic that the court will ultimately throw out the law altogether.

The two most visible victories won by ACLU efforts this year have been in Washington, D.C. The Senate Judiciary subcommittee voted not to recommend any of the proposed constitutional amendments that would either prohibit abortions altogether or return to the states the power to prohibit abortions. This is an impressive legislative victory especially since the right-to-life lobby for the amendments was so well-financed and well-organized. The second victory was a Pentagon decision to change its policy about abortions on military bases. The new policy instructs military base commanders to abide by the Supreme Court decisions instead of the law of the state where the base is located. Formerly restrictive state laws often deterred the military from providing abortions to military personnel in base facilities. The ACLU expects to use this change of policy as an argument with which to "lean" on other federal agencies which are ignoring or violating the Supreme Court's decisions.

Sexual Privacy

The Sexual Privacy Project continued its work at ending government intrusions into the private sex lives and sexual preferences of Americans. Efforts at public education through public speaking, television and radio appearances and writing expanded greatly. The most notable accomplishments in this area were the July publication of the ACLU handbook on *The Rights of Gay People* and speeches to conferences of judges on sexual privacy issues.

The discharge of Sergeant Leonard T. Matlovich from the Air Force became the first gay rights case to become a nationwide cause celebre. Sergeant Matlovich received a less than honorable discharge after 12 years of outstanding military service merely because he is a professed gay. The ACLU fought his discharge and has taken the case into the federal courts.

In litigation, *North Carolina* v. *Eugene Enslin* the ongoing important test case involving the prosecution of an adult for consensual sodomy in the privacy of his home was lost on appeal to the North Carolina Court of Appeals and *certiorari* was denied in the North Carolina Supreme Court. A petition for *certiorari* has been filed with the U.S. Supreme Court.

A more favorable decision was made by a New York State trial court which declared the state sodomy law unconstitutional on the basis of a denial of equal protection to unmarried people in an ACLU case defending a sodomy prosecution. The state is appealing that decision.

The visitation rights of a gay father have been restricted because of his homosexuality and gay activism. After a six-day trial with expert witnesses testifying on homosexuality the trial court found for the mother. We have appealed the decision. The case was used as a blueprint for more successful ACLU cases involving custody rights of gay parents.

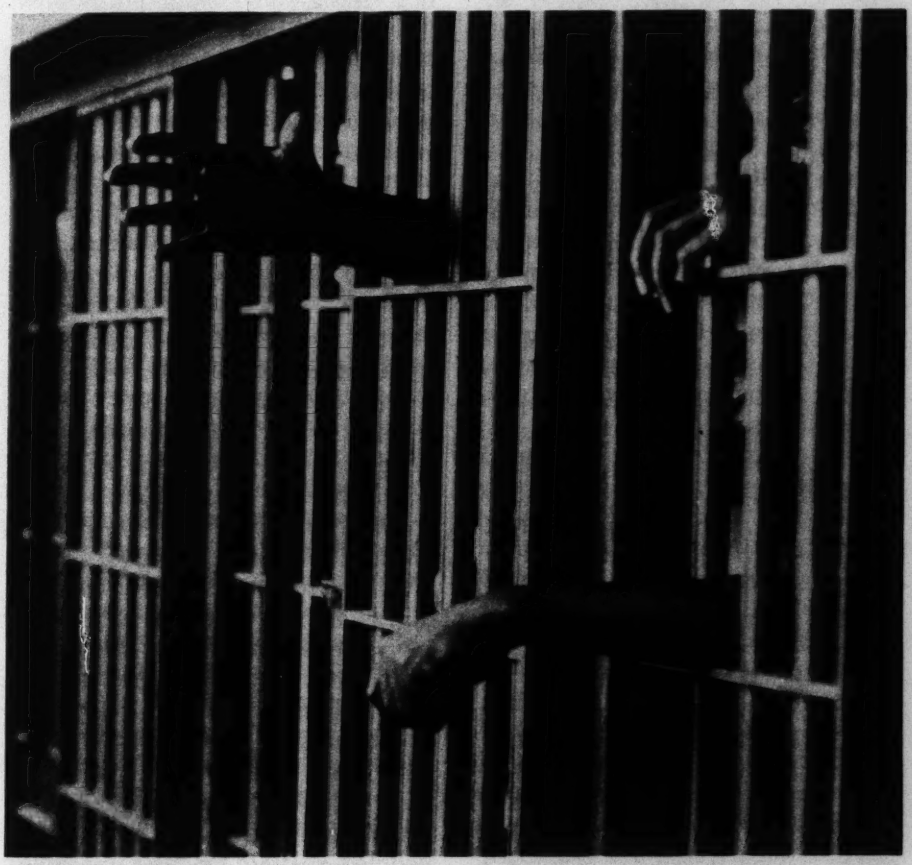
In Northern California the ACLU was successful in obtaining a preliminary injunction enjoining the unequal enforcement of the prostitution laws against women. The ACLU of Washington has filed a similar state taxpayer's suit challenging the Seattle prostitution statute.

In the past year the project has become involved in challenging the constitutionality of discrimination on the basis of marital status. Two teachers have been ousted from the classroom based on marital status. In South Dakota a teacher was fired because she was unwed and living with her male friend. The ACLU has appealed a district court decision upholding the dismissal.

In Austin, Texas an unwed pregnant school teacher was transferred to a non-teaching position because of her unwed pregnant status. We have appealed the affirmance of that act to the U.S. Court of Appeals for the Fifth Circuit.

Prisoners' Rights

The National Prison Project together with the Alabama CLU conducted a major legal campaign to have the entire Alabama prison system declared unconstitutional because it inflicts cruel and unusual punishment in violation of the Eighth Amendment. After a massive amount of pretrial discovery the case went to trial in August and in addition to hundreds of exhibits, stipulations and photographs as well as prisoner testimony, eight nationally known experts, the largest number ever to testify in a prison case, appeared on behalf of the project. At the conclusion of the trial the state of Alabama conceded that we had proved that their entire system was in violation of the Eighth Amendment and the District Court immediately enjoined the state from taking any additional prisoners into the various state prisons until the prison population was reduced to its original designed capacity, a reduction of approximately 42 percent. In addition the court ordered the state to close certain segregation facilities and to renovate others immediately. A



final decision of major national importance was expected at the year's end.

One of the thrusts of the Alabama case was to attempt to use litigation as a vehicle to compel the state to utilize various alternatives to traditional incarceration. In this connection the prison project also began examining and cataloging the different alternatives to incarceration utilized in various parts of the country. The purpose is to determine which of these alternatives work better and under what circumstances from a cost-benefit point of view. A series of model alternatives will be completed shortly for use both in the project's own litigation and as a resource for affiliates.

The prison project continued to devote a great deal of effort to challenging the use of behavior modification programs in prisons. Members of the project staff participated in the preparation of a number of national and local TV documentaries on the subject and also helped organize the first national conference on behavioral issues in closed institutions. Early in the year the prison project and the Connecticut CLU filed a lawsuit in federal court challenging a behavior modification program for "child molesters" at a state prison in Connecticut. The program consisted of the administration of painful electric shocks to the groin area of prisoners while showing them slides of nude children and the use of aversive hypnosis conditioning as well as group therapy. The electric shock procedure was discontinued shortly after the lawsuit was filed. The case is continuing on the various other issues.

During the past year the prison project and some of the affiliates challenged the use of prisoners as subjects of non-therapeutic medical experimentation. In a number of states successful educational and legislative campaigns were mounted to halt proposed new medical experimentation programs. Staff members appeared at various national hearings and conferences including a conference sponsored by the National Academy of Sciences. The project also filed a lawsuit in federal court in Maryland which involved the first major class action challenge to the use of state prisoners as guinea pigs. Although the case is still pending, the Department of the Army which is the major sponsor of the medical research at the Maryland prison may discontinue its funding thus closing down the entire program.

The prison project also won significant victories during the year involving access to prisoners' records and official documents. In a Freedom of Information Act case in its own name, the project forced the United States Board of Parole to make various records available to the project and to the general public. The project also won a major victory against the Federal Bureau of Prisons in connection with prisoners having access to their files.

The Kentucky affiliate with the support of the National Prison Project won a major decision involving licensing prohibitions against ex-offenders. A three-

judge federal court declared the Kentucky Barbering License Statute unconstitutional on equal protection grounds in a sweeping decision. In an attempt to replicate this important decision the prison project prepared a set of materials including model pleadings and model legislation which it offered to make available to the various state affiliates and chapters. About 25 state affiliates have obtained these materials and are working on removing licensing and other employment restrictions against ex-offenders.

The New York Civil Liberties Union won a number of cases involving the right to due process procedures in the parole granting and revocation stages as well as in connection with the revocation of narcotics out-patient status. A number of affiliates have undertaken significant litigation against county jails resulting in some favorable decisions during the year.

Farm Workers' Rights

The ACLU's South Texas Project forms part of La Oficina Legal del Pueblo Unido, located in the lower Rio Grande Valley. The project attempts to provide legal skills to assist the efforts of poor Chicano farm workers for social change and to protect their civil rights.

Eighty percent of the valley's 355,000 inhabitants are Chicano; approximately 100,000 are migratory and seasonal farm workers. The valley is one of the country's poorest areas; the income of 40 percent of its families fall under the federal poverty level. Unemployment is unofficially 25 percent and an estimated 40 percent underemployment compounds the problem. The valley is known to its people as the Valley of Tears.

Racial and economic discrimination are common. Spanish-speaking children are severely beaten in school, health care is abominable or nonexistent. Families are deprived of municipal services, such as sewer and water. Discrimination abounds in the criminal justice system. Police beat innocent people. In short, the history of the valley is one of institutional repression and discrimination against Chicanos and farm workers.

The project provides legal support to community organizations and persons who actively seek to change the pattern of discrimination against farm workers. The project defended the United Farm Workers during the valley melon strike against suits by the growers to restrict UFW picketing rights and brought suit charging illegal discrimination against growers who refused to hire workers because of previous strike activities with the UFW.

Likewise, the project assisted a coalition of 24 community organizations to successfully pressure six radio and television stations to increase Spanish-language programming and to make more programming relevant to farm workers. The pressure resulted in FCC

amendments to the stations' licensees.

Besides supporting community groups legally, the project litigates cases where the beneficial impact extends beyond the individual. Combating abuses against farm workers by the legal system is an example. Past efforts include a federal suit to close an antiquated county jail, a comprehensive suit challenging the systematic exclusion of Chicanos and farm workers from county grand juries, and several suits challenging police brutality in the colonias (rural ghettoes) where farm workers live. The project is presently planning a valley-wide challenge to the practice of placing Spanish-speaking children (mostly farm workers) in classes for the mentally retarded on the basis of English-language proficiency, to at-large elections for commissioners in valley cities which dilute the Chicano vote, and to the underrepresentation of low income people and Chicanos on criminal trial juries.

The project has succeeded in enjoining two school districts from not allowing farm worker children to attend classes in those districts when their parents are migrating in other parts of the country even though children are residing with grandparents.

Finally, the project actively trains law students and paralegals how to use legal skills to the advantage of the community. All the paralegals and one law student are Mexican-Americans from the valley.

In southern California, the affiliate's Farm Workers Project continues to defend the rights of United Farm Workers' members to organize, make contracts, and to carry on boycott and strike activities. One of the project's lawsuits, arising from the turbulent farm labor strikes of 1973, calls for $75 million in damages and an injunction against the Teamsters and 29 grape growers for conspiring to deprive UFW members, who are 90 percent nonwhite, of their civil rights. In October, a federal court upheld the lawsuit, ruling against the Teamsters and growers, who had argued that the court lacked jurisdiction over the alleged actions.

In Memoriam, Marvin M. Karpatkin

Marvin M. Karpatkin, General Counsel of the American Civil Liberties Union, died in January 1975 at the age of 48. Had he lived, he would have figured importantly in much of the work described in this report. The defense of draft resisters still facing prosecution and the efforts to collect damages for the victims of the Kent State shootings and their families are but two of the many parts of the ACLU's work which suffered because of his death.

In a tribute to Marvin M. Karpatkin and in an effort to continue his work, the American Civil Liberties Union Foundation has established a fellowship in his name. A Marvin M. Karpatkin Fellow will be selected annually from among third-year law students or recent law graduates. The Fellow will work for a year in the Legal Department of the national office of the ACLU. The Fellow's responsibilities will cover the entire spectrum of civil liberties research and litigation conducted by the ACLU Legal Department. The first annual Marvin M. Karpatkin Fellow began work in September 1975.

Contributions from friends of Marvin M. Karpatkin (some of whom knew him only by reputation) launched the Fund. It is still substantially short of the $200,000 needed to sustain it on a permanent basis. Additional gifts are solicited. Tax-deductible gifts should be made to the ACLU Foundation (Marvin M. Karpatkin Fund) and sent to the ACLU Foundation, 22 East 40th Street, New York, New York 10016.

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About This Report

This report describes a small part of the work of the ACLU and the ACLU Foundation during 1976. It omits any mention of most of some 6,000 court cases brought by the national ACLU, the Foundation and their state and regional affiliates. There is space here for noting only a few of the thousands of legislative, administrative and public policy battles.

The work undertaken here was made possible by the 275,000 members of the ACLU, the 20,000 contributors to the ACLU Foundation, the 5,000 volunteer lawyers, the 10,000 persons who serve on the committees and boards of the 400 local chapters of the ACLU, the 49 state and regional affiliates and the national organization, and the 400 persons who served on the nationwide staff of the various parts of the organization. As is customary in these reports, no recognition is given here to their individual efforts which, taken together, make up the accomplishment of the Civil Liberties Union.

During 1976, these efforts cost about $8 million. About $4 million was contributed in membership dues. Of this amount, approximately 60 percent, or $2.4 million was spent by ACLU state and regional affiliates. The remaining $1.6 million was spent by the national office. About $3.4 million was contributed by individuals and foundations to the ACLU Foundation. Of this, about half was spent by the national Foundation and the other half by its state affiliates. Benefits for ACLU affiliates, bequests and book sales accounted for most of the remaining $500,000. About 80 percent of this money was spent by the state and regional affiliates, the remaining 20 percent by the national organization. In all, therefore, about $3.4 million was spent by the national ACLU and ACLU Foundation and about $4.6 million by the state and regional affiliates.

Total income was up about $500,000 over the previous year, a little more than necessary to keep up with inflation.

Introduction

by Aryeh Neier

The liberties which inspired the creation of the United States in 1776 diminished during 1976.

The worst setback to civil liberties was a series of decisions by the United States Supreme Court. These decisions limit the ability of the federal courts to perform their historic role as guardian of constitutional rights. Invoking such concepts as standing, comity and justiciability, the Supreme Court has placed large obstacles in the paths of people whose rights have been denied to them and who seek relief from the courts.

The Burger Court's decisions are a sharp contrast to the decisions of the preceding decade and a half. The Warren Court opened the federal courts to the poor and the powerless, and revitalized the United States Constitution by using it on a day-to-day basis as a standard against which to measure the activities of the government.

Early in his tenure as Chief Justice, Warren E. Burger made a speech calling on law students not to think of the law as an instrument of change. Burger's view of the law as an intrument to uphold the status quo was reflected in one Supreme Court decision after another during 1976.

A consequence of the Warren Court's view of the role of the law and the courts was the emergence of a public interest bar. It is not yet clear whether the Burger Court's decisions will so hamper the work

The Supreme Court. Front row, from the left: Justice Byron White and William Brennan, Chief Justice Warren Burger, Justices Potter Stewart and Thurgood Marshall; back row: Justices William Rehnquist, Harry Blackmun, Lewis Powell, and John Paul Stevens.

of lawyers pressing various causes as to drive them away. As yet there is little indication that the public interest bar will give up in despair. Cause lawyers are learning to bring cases with less sweeping claims. In a few places they are shifting their efforts into the state courts, traditionally a less receptive forum than the federal courts. And, increasingly they are looking to the legislatures to advance their causes.

The Supreme Court for most of the year continued to be hospitable to claims of equal rights for women and to efforts to obtain the right to get abortions. Perhaps this is because the Supreme Court is responding to the vitality of the women's rights movement which remains strong while other rights movements born during the 1960s have faded away.

Some lower federal courts continue to use the United States Constitution in a way that fulfills its revolutionary potential. Several recent decisions in cases brought by the ACLU have begun to articulate the principle that government may not intervene in people's lives to remedy ills when the almost certain consequence is to make matters worse.

This principle emerged in a case the ACLU fought against the Alabama prison system. A federal judge ruled that conditions in the Alabama prisons were so dreadful that the consequence of incarceration was to make it more likely than ever before that the imprisoned individuals would commit additional crimes and spend additional time in prison.

A federal judge in Iowa ruled that the consequence of taking children from parents alleged not to have given them enough intellectual stimulation was to make matters worse for the children. After they were taken from their parents, the children were shuttled in and out of institutions and foster homes before an ACLU lawsuit was able to reunite them with their parents.

In New York, a federal judge ruled that the way a giant institution treated mentally retarded children exacerbated the severity of retardation. These things, the federal courts are beginning to say, may not be done.

This is an important principle. It might be called the right against debilitation. It recognizes the mischievous effect of too much intervention in people's lives. Government should restrain itself. It must protect people against crime, but should not do so by making criminals more criminal. Government must protect abused or abandoned children, but should not take children away from their parents for lesser reasons. If the government must take children from their parents, it should be to improve their lot. Government must provide care for the helpless but should not do it in a way that makes them more helpless.

The Supreme Court has not yet had a chance to review any of the decisions enunciating this principle. It might be best if some time elapses before the principle is considered by the Supreme Court. That way, it could gain support and demonstrate its wisdom. Too early review by the Supreme Court could nip in the bud the most promising development in the struggle to stop government from destroying people's liberties in the guise of helping them.

The revelations about wrongdoing by the intelligence agencies continued during 1976. Not many people got very excited.

Congress gave serious attention to two bills affecting the intelligence agencies. S.1 would have given the government new powers to maintain secrecy and to punish people who revealed government secrets. S.3197 would have given the government new powers to tap people' telephones—it purported to legitimize electronic eavesdropping for intelligence gathering purposes unrelated to crime.

The ACLU had a principal role in stopping both bills. Fine. But we got nowhere in trying to enact controls on the intelligence agencies. That effort resumes in the 1977 Congress.

It is not easy to explain the lack of excitement about the revelations of wrongdoing by the FBI and the CIA. What they did could hardly have been worse. The most fanciful fears of the most paranoid among us were exceeded by reality. Yet in 1976 all the fighting was against efforts to authorize illegal acts that were unauthorized before.

Perhaps Americans have reached a point of collective saturation. We learned about so much government wrongdoing over Vietnam and Watergate that we can absorb no more. Perhaps we needed some time to recover from those earlier shocks.

The dangerous thing about inaction is that now that we know what we know, inaction is acquiescence. Future abuses may be great but still pale by comparison with what has already been exposed. How are we to do anything about those future abuses if we do nothing about what is already known?

In 1976 the Supreme Court also reversed a course set four years earlier and said that the states may resume official killing. The ACLU has organized a National Coalition Against the Death Penalty to try to prevent executions. Perhaps we will succeed. But it is equally likely that by the time this report reaches you, we will have had the first American executions in a decade.

With enough effort, it should be possible to prevent executions of all but a small number of those people sentenced to death. Sad to say, it may take the killing of some to save the others on death row.

One guesses that as people see real people executed, a national revulsion against the death penalty will set in. The Supreme Court may discover that the public sentiment in favor of executions that it relied on in its decision is quickly shifted. On the other hand, that may be too optimistic. Perhaps executions will stimulate the appetite for more. Thanks to the Supreme Court, we will soon find out.

When the fall 1976 school term opened, school busing for racial integration seemed to be more accepted than in the previous year. That, and the important role of black voters in electing a new president, make possible a little more sanguine attitude about movement towards racial equality than for several years past.

There are many blacks now holding elected office, especially in the South. With leadership from them, and with a president who could not have been elected without them, we are entitled to hope that the federal government will again become a friend of racial integration and racial equality. Perhaps that hope for 1977 is the best that can be said in reviewing what happened to civil liberties in 1976.

"Admit it. You just like to see Aryeh Neier of the ACLU gasp and fling up his hands in horror."

Secrecy and National Security

The more we know about government secrecy the clearer it becomes that no government can be trusted with the unchecked power to use "national security" to conceal whatever it chooses.

The congressional investigations of the intelligence agencies revealed a great deal about clandestine spying, yet they also showed that a great deal of information about agency misdeeds and failings is still being protected under the banner of "national security."

The story of the Pike Committee Report is a prime example. The Pike Committee prepared an unusually readable report which documented that the intelligence agencies not only abused their power but frequently failed to carry out the functions for which they were created.

The House of Representatives voted to suppress the Pike report. In a move reemphasizing the fact that leaks have become the public's most reliable source of information about their government, newsman Daniel Schorr then gave the *Village Voice* a copy of the report which he had received before the House voted.

While the published report contained information damaging to the reputations of the intelligence agencies, it contained no information which would damage the security of the nation. Yet the House Ethics Committee and the FBI mounted a lengthy investigation of the leak. According to a recent Freedom of Information Act request, the FBI is still continuing the investigation, even though the ethics committee has dropped the matter and it has been established that the Schorr leak did not violate any criminal statutes.

Access to information about government activities is critical if the intelligence agencies are to be controlled or if major policies are to be undertaken with the informed consent of the governed. Much of the work of the Project on National Security and Civil Liberties is designed to bring an end to the protection which illegitimate secrecy allows the executive branch.

One project lawsuit, *Halkins* v. *Helms*, is a promising avenue for learning more about the full extent of the supersecret operations carried out against Americans who were exercising their First Amendment rights. In addition to suing the CIA for its Operation CHAOS activities, *Halkins* is the first court action challenging the legality of the National Security Agency's ongoing surveillance of all overseas communications of Americans.

The amended Freedom of Information Act, which has now been in effect for nearly two years, is another wedge being used to pry open the cover of the clandestine branch of government. The project has so far filed well over a

hundred requests not only for information about the activities of the intelligence agencies but for documents which shed light on how important policy decisions are kept secret from the public and Congress.

Some agencies have been conscientious about fulfilling the intent of the act, but others, such as the National Security Council, have reacted as if the law did not apply to them.

Court review has produced mixed results. A federal court of appeals, for example, reversed a lower court decision and held that the FBI did not have to respond to an FOIA request for personal files within the statute's time limit of 20 days. The bureau is presently taking as long as nine or ten months to process a simple request.

A federal district court held that, given congressional acquiescence in keeping the CIA budget secret, the FOIA cannot be used to pry it out.

In a favorable decision, the district court, ruling on a project lawsuit, ordered the State Department to release the deletions from a Kissinger background press conference. Other suits have produced additional documentation on subjects such as the CIA assassination plots.

The project has helped other organizations and individuals take advantage of the FOIA by cosponsoring with various ACLU affiliates a series of conferences on FOIA litigation and by publishing a handbook, *Litigation Under the Amended Federal Freedom of Information Act*, which is regularly updated.

Privacy

The right of privacy did not fare well in the 94th Congress, which adjourned without acting on any of the major privacy proposals on its agenda. The Tax Reform Act of 1976, however, does contain some mild safeguards designed to protect the confidentiality of individuals' tax records and to restrict IRS access to taxpayers' bank records. Unfortunately, the same statute also extends to state and local agencies the authority to use the Social Security number as an identifier in implementing their tax laws, drivers license and motor vehicle registration systems, and welfare programs.

Nor did the right of privacy do well in the Supreme Court. In *Paul* v. *Davis*, the Court rejected the plaintiff's assertion that the stigma of being labelled an "active shoplifter" in a widely disseminated police flyer, after charges of shoplifting had been dismissed, was a violation of his civil rights and right of privacy. In two other cases, the Court upheld the power of states to enact criminal sanctions against private consensual homosexual acts, and the

right of Border Patrol officers to stop vehicles at fixed checkpoints without either a warrant or reasonable suspicion to believe that the vehicles contain illegal aliens. The ACLU participated in all three cases.

In two non-ACLU cases, the Supreme Court ruled that a person's private papers may be used against him in a criminal trial, and that the government may subpoena an individual's bank records for use in a criminal proceeding because the records belong to the bank, not the customer.

Lower court victories by ACLU affiliates in Connecticut, Massachusetts, Northern California and Ohio helped pressure the U.S. Civil Service Commission into dropping all political loyalty questions from standard application forms for federal jobs. The questions eliminated asked whether the job seeker was or had been a member of the Communist Party or any group advocating the forcible overthrow of the government. The federal courts in the four Union cases had ruled the questions unconstitutional.

The first year's experience with the Privacy Act of 1974 which went into effect September 1975, did not fulfill dire predictions of intolerable administrative burdens. In fact, relatively few people have taken full advantage of their rights under the act to examine and correct personal information maintained by federal agencies, and the ACLU has been working to educate the public about the act and to encourage its use.

The Privacy Protection Study Commission established by the Privacy Act to explore the need for further legislation has held a series of public hearings on problems of record keeping by banks, schools, employers, insurance companies, credit-reporting agencies, and other important data-collecting institutions, particularly in the private sector. The ACLU has been a frequent participant in these hearings.

During 1976 three more states—Connecticut, Ohio, and Virginia—adopted fair information practices acts modeled to some degree on the federal statute, bringing to nine the total of states which have enacted such laws. Maryland and California adopted bank record privacy laws, and Michigan passed a law prohibiting employers from asking employees or job applicants to reveal information about arrests not resulting in conviction.

A major privacy victory was won in the New York legislature with passage of a law sealing the records of arrests not followed by conviction, returning fingerprints and police photographs to persons not convicted, and forbidding employers, insurers, licensors, and creditors to ask for information about arrests not resulting in conviction or to seek such information from other sources.

All of these statutes were passed with strong support by local ACLU affiliates.

In the absence of controlling federal legislation, many affiliates have become deeply involved in the development of guidelines for the operation of local and state computerized criminal justice information systems. One hard-fought issue: whether the systems shall record intelligence and raw investigative data. In Philadelphia, the local ACLU affiliate was successful in preventing the inclusion of such information and in securing for individuals the rights of access and correction of information recorded in that city's new criminal justice data bank.

Political Surveillance

During the past several years the government, often as a result of ACLU litigation, has been forced to disclose shocking evidence of political surveillance undertaken by the executive branch and its intelligence agencies. Among these disclosures have been the political abuses of Richard Nixon, the FBI's counterintelligence programs (COINTELPRO) against domestic activists, and a variety of surveillance abuses by the CIA, the Army, the Secret Service and the IRS.

In 1976 the ACLU lawsuits which unearthed many of the facts about these intelligence agency abuses continued to advance through pretrial phases of litigation. The lawsuits seek to remedy injuries suffered in the past and to stop similar intelligence abuses in the future.

In the lawsuit challenging the U.S. Army's intelligence surveillance of American citizens in West Germany as well as its infiltration of the Lawyers Military Defense Committee, the court denied the government's motion for summary judgment. At the same time the court ruled that the Army must obtain court warrants before it can place wiretaps on United States citizens abroad, a significant recognition that the Constitution protects Americans overseas as well as at home.

During the year ACLU lawyers continued to litigate lawsuits on behalf of former members of the National Security Council who were wiretapped for extensive periods of time even after they left government employment. The Union conducted searching and quite revealing depositions of the defendants, including Richard Nixon, H. R. Haldeman, John Ehrlichman, Henry Kissinger, John Mitchell and Alexander Haig.

Wiretapping was also an important legislative issue in 1976. ACLU lobbying helped stop the passage of S.3197, the Foreign Intelligence Surveillance Act.

"DISAGREEING WITH ME, EH? YOU MUST BE SOME KIND OF A NUT"
AMERICAN CIVIL LIBERTIES UNION POSITION
ATTORNEY GENERAL
ADMINISTRATION WIRETAP BILL
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The act would have provided congressional authority for the wiretapping of Americans without probable cause to believe they had committed a crime.

A significant victory resulted from a case challenging the refusal of the Secret Service to admit certain reporters to presidential press conferences because of the reporters' political views. The court ruled that the Secret Service acted arbitrarily and deprived the plaintiffs of rights guaranteed by the First and Fifth Amendments. The Secret Service was ordered to set up specific standards for the issuance or denial of press pass applications.

Significant procedural issues in the ACLU's case against the CIA's mail-intercept program are pending before the court. The class action suit charges that during a 20-year period the CIA unconstitutionally opened and read foreign correspondence to and from American citizens, including senators and other prominent leaders. In addition the ACLU has filed actions under the Federal Tort Claims Act for damages suffered by those whose mail had been intercepted and opened.

The ACLU is also actively involved in numerous lawsuits challenging the illegal political intelligence activities of state and local law enforcement agencies in, among other places, Memphis, Washington, D.C., Houston, Kansas City, New York and Chicago.

First Amendment and Censorship

The ACLU's primary and historic commitment to free speech issues continued to consume a substantial part of our resources and energies in 1976. New threats to First Amendment values came from people whose motives were benevolent and who sought to restrict speech in order to advance other constitutional values. Two such battles resulted in Supreme Court victories for free speech.

In *Buckley* v. *Valeo*, the Supreme Court adopted the ACLU argument that restrictions on the amount of money spent for campaign speech and activities were direct restrictions on such speech itself and therefore inconsistent with the First Amendment. Accordingly, the expenditure limitations of the Federal Election Campaign Act were invalidated. The Court, however, did uphold the Act's limitations on campaign contributions to candidates and committees.

Several affiliates are presently challenging state and local campaign reform measures on the ground that, in seeking to eliminate corruption in politics, such laws go too far in restricting freedom of speech and association. In addition to litigation, we have engaged in a broad public campaign

to educate the public about the excesses of such reform laws.

Similar arguments raged over the constitutionality of gag orders which were imposed on the press on the ground that such restraints were necessary to preserve the defendant's right to a fair trial. In *Nebraska Press Association* v. *Stuart*, the ACLU argued that, given the primacy of the ban against prior restraints, and since there were a number of ways to protect the defendant without censoring the press, such gag orders were unconstitutional. The Supreme Court unanimously agreed. Affiliates have handled a number of other cases involving similar gag orders or comparable restrictions on the ability of the press to report news about judicial proceedings.

On the negative side, the Supreme Court rejected our arguments that presidential candidates have a First Amendment right to enter the open and public areas of military installations in order to campaign for votes.

The Union secured a number of important victories in lower courts as well. In one case, the Union overturned a libel judgment against an author who referred to William F. Buckley, Jr. as a radical right fellow traveler. The appeals court found such statements to be protected political rhetoric. The Fifth Circuit, how-

ever, rejected our contention that a state university student newspaper could not refuse to accept classified advertising from a gay student organization. We will appeal that ruling to the Supreme Court.

Obscenity issues generally, and the movie *Deep Throat* in particular, continued to be of concern to the Union nationwide. In an unprecedented prosecution in Memphis, Harry Reems, the actor, was convicted of participating in a conspiracy to make and distribute the film. The Union has agreed to support him with an *amicus* brief on sentencing and on any appeals. We are also representing Georgina Spelvin, the star of *The Devil in Miss Jones,* who is being prosecuted in Memphis on similar federal charges.

In Ohio, Illinois and Washington, affiliates are involved in efforts to permit student groups to show x-rated films on campus. We are also representing a projectionist prosecuted for running *Deep Throat.* The Union has continued its efforts to limit the ability of the government to suppress the importation of sexually oriented materials sent from abroad to individuals for their own private use. Finally, affiliates have been organizing to deal with new censorship problems posed by "erogenous zoning," where municipalities attempt to use their zoning powers to prohibit the distribution of sexually orinted materials.

Censorship problems in the academic setting also continue to persist. The Ohio affiliate won a major victory against a school board which had removed certain books from classroom use. The New York affiliate is planning litigation against a Long Island school board that removed certain works of modern fiction from its library. And affiliates generally have been involved in numerous other cases challenging censorship actions by school officials seeking to suppress the expression of student views and narrow the spectrum of available knowledge.

On a day-to-day basis, the ACLU remains the single most important force against censorship and in favor of freedom of expression. The Union protects the First Amendment whether the issue is the right to leaflet, demonstrate or hand out newspapers without undue police interference, to use strong language without fear of prosecution, to criticize public officials without fear of penalties for criminal libel, or to advertise palm reading and sell maps to the homes of movie stars without government interference.

The common thread in all these cases is our abiding belief that there is no such thing as "bad" speech and that the only permissible antidote to "bad" speech is more speech.

Law and Order

In the United States Supreme Court, the forces of "law n' order" had their most successful year in 1976, and civil liberties interests their most disastrous.

The ultimate law and order issue was, of course, capital punishment, and the centerpiece of the Court's term was the tragic decisions upholding the death penalty. By a vote of 7 to 2, with only Justices Brennan and Marshall dissenting, the Court ruled that the state's infliction of the ultimate punishment—the penalty of death—was not *per se* a violation of the Eighth Amendment's ban on "cruel and unusual punishment." In doing so, the prevailing opinion of Justice Stewart accepted that retribution and vengence were valid goals to be served by punishment: ". . . Capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs."

At least there were some procedural victories in the Court's death penalty rulings. The Court did invalidate the use of the mandatory death penalty for certain categories of capital offenses. The Court also ruled that judges or juries must be given guided discretion to decide which defendants shall be sentenced to death. In the wake of these rulings, the ACLU, through its Capital Punishment Project, has been leading the battle against threatened executions.

Even worse, though with less grisly consequences, was the Court's virtual repeal of the Fourth Amendment's prohibition against unreasonable searches and seizures. The Burger Court sided with law enforcement in all ten search and seizure cases it decided last year.

The most far-reaching of these decisions was the ruling that state prisoners could not seek federal *habeas corpus* relief to challenge their convictions on Fourth Amendment grounds. The Court reached this decision despite the Union's amicus brief demonstrating the vast number of cases in which federal courts had found search and seizure defects in convictions upheld by state courts. During the coming year, the ACLU will continue to file briefs in Fourth Amendment cases in an effort to keep the Court from further eroding search and seizure protections.

The Court handed the Union and civil liberties damaging defeats in other due process areas as well. Federal courts it ruled, could not grant systematic relief to remedy a pattern of police brutality and misconduct. Justices of

the peace did not have to be lawyers or trained in law even though they had the power to incarcerate defendants on minor offenses. Prosecutors were totally immune from damage suits for misconduct in their "judicial" roles. And, it does not constitute entrapment for the government to sell drugs to itself, by having one federal agent give the drugs to a hapless defendant and the other agent buy the drugs from him.

In 1977 the Court will consider the government's appeal from an ACLU lower court victory holding it a denial of due process for the police and prosecution to place an informant among a criminal defendant's associates in an attempt to discover his defense strategy.

Despite these setbacks in the Supreme Court, affiliates throughout the country continue to represent the victims of police lawlessness and judicial indifference to the rights of criminal defendants. The national legal docket contains literally hundreds of cases involving police brutality and excessive use of force, illegal arrests, searches and seizures, improper interrogation of suspects and denial of the right to counsel. Perhaps most noteworthy among such cases is the Kent State appeal, where ACLU attorneys are attempting to overturn the judgments in favor of law enforcement officials responsible for the 1970 shootings on that campus.

Several affiliates have been exploring methods short of litigation to deal with problems of police misconduct, for example, by facilitating the filing of citizen complaints with law enforcement agencies. The Vermont affiliate prepared an investigative report on an undercover narcotics agent whose tactics had resulted in dozens of unfair convictions. The report helped get many of his convictions thrown out. The agent is, himself, now in prison.

Capital Punishment

In anticipation of an adverse decision on the death penalty from the Supreme Court, the ACLU's Capital Punishment Project began early in the year to gear up for a national drive to forestall executions and to resist the expected legislative push for new death penalty statutes. The July 2 and 6 decisions in *Gregg, Woodson, et al* held that "the punishment of death does not invariably violate the Constitution," setting a model for capital statutes acceptable to the Court and at the same time immediately endangering the lives of about 300 persons on death row.

As expected, the floodgates have opened. Oklahoma and Louisiana have passed conforming capital statutes, passage in New Jersey is imminent, and Illinois and other states are in dan-

ger. Capital sentences are coming in increasing numbers, with the total at year's end expected to be close to 500.

The Capital Punishment Project's chief functions are: (1) to obtain executive clemency for all persons facing executions, (2) to provide social and criminological data to legislators, state executives and community leaders and to persuade them to prevent executions and to abolish capital punishment, (3) to sustain a vigorous campaign of public education and advocacy against the death penalty, and (4) to create an information network on litigational and legislative developments on capital punishment.

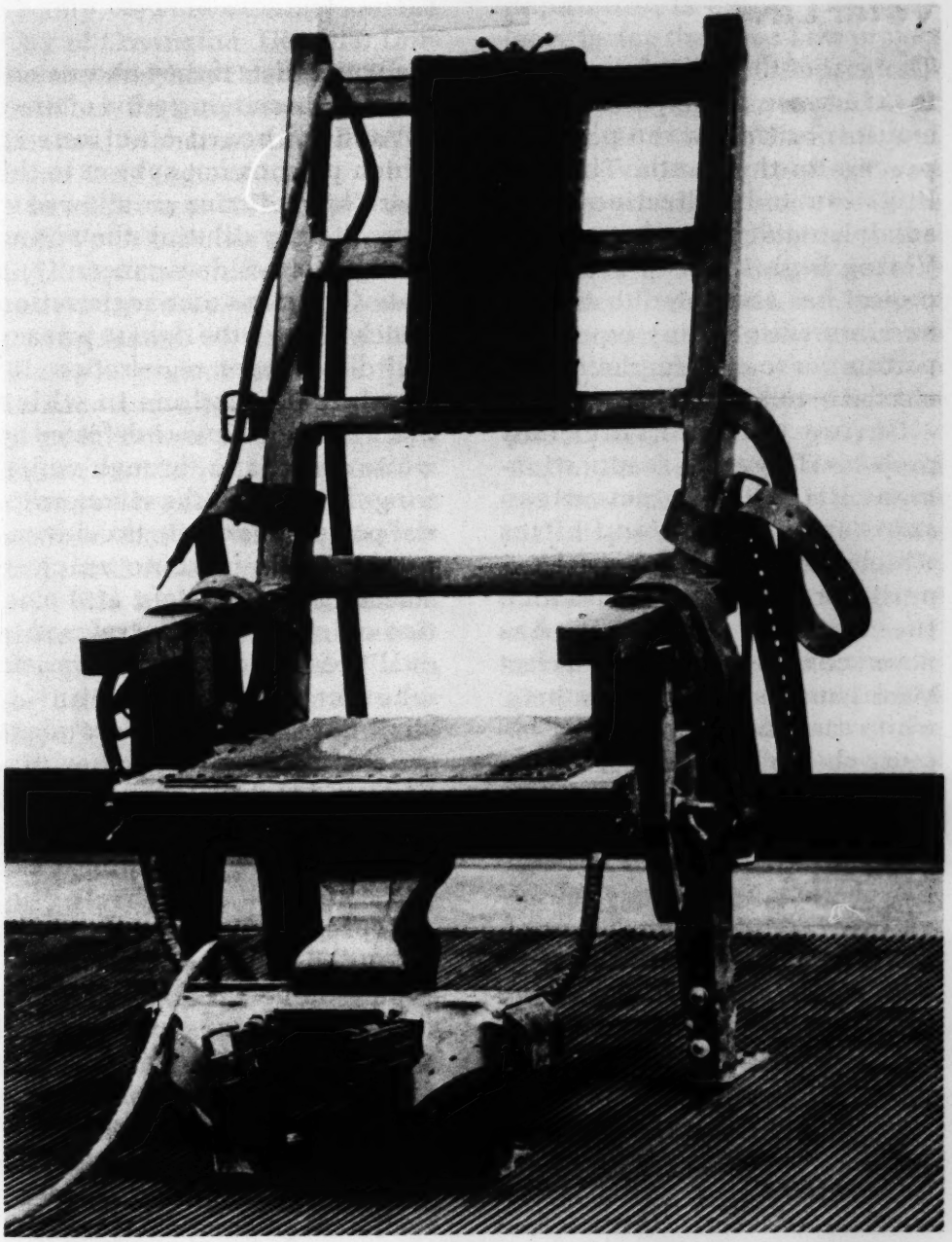
The project has founded the National Coalition Against the Death Penalty (NCADP) with project staff serving as secretariat. NCADP comprises major national organizations in the religious sector (e.g. the Episcopal Church, United Church of Christ, United Methodist Church, United Presbyterian Church, American Friends Service Committee, Jesuit Conference, Union of American Hebrew Congregations, etc.), public interest law (e.g. Southern Coalition on Prisons and Jails, Fortune Society, National Lawyers Guild, National Council on Crime and Delinquency, Southern Poverty Law Center, etc.), political area (e.g. War Resisters League, Friends Committee on National Legislation, National Committee Against Repressive Legislation Women's International League for Peace and Freedom, Jewish Peace Fellowship, etc.) and in the minority communities (National Association for the Advancement of Colored People, National Conference of Black Lawyers, Law Students Civil Rights Research Council, etc.).

This coalition is being replicated on a state-by-state basis so that legislative and clemency matters can be effectively dealt with in state capitals.

In addition to coordinating the coalition's work, the Capital Punishment Project is drafting legislation for moratoriums on executions as well as highly demanding due process amendments for the inevitable state enactments.

The project's greatest visibility in 1976 came over the issue of Gary Mark Gilmore and his stated wish to die by firing squad in Utah. Coordinating with the Utah affiliate and the NAACP Legal Defense Fund, the project had pursued every legal means to stop the execution. In addition our role in public education was particularly crucial in this case, making it clear that the argument was not over Gilmore's "right to die" but over the right of the state to put him to death.

As we approach the end of a nearly ten-year moratorium on executions, the abstract idea of capital punishment becomes a bloody reality. The ACLU is



committed to the case-by-case work of keeping people alive while at the same time persuading the American people to finally banish this barbarous punishment from our criminal justice system.

Voter Law

The goal of the Voter Law project is to increase participation by racial minorities in the political process in the South. Through litigation and utilization of the administrative procedures of the Voting Rights Act of 1965, the project has attempted to remove barriers which deny equal opportunities to qualify, run and be elected to public office.

During 1976 the Voter Law project engaged in reapportionment litigation in seventeen southern counties and cities which contain a substantial minority population but in which the minority community has never, or rarely, been able to elect black candidates, or sympathetic white candidates, principally because elections are held at-large.

In addition to reapportionment cases, Voter Law attorneys have brought or participated in litigation challenging: (1) state laws requiring candidates for public office to be elected by majority vote and run for designated posts in multiseat races; (2) a state felon disqualification scheme which has an adverse racial impact; (3) filing fee and petition requirements for candidates to get on the ballot; (4) the exclusion of blacks from the board of directors of a county water company; (5) a state's full-slate ballot practice requiring persons to vote for every office up for election and its purge law which removes persons from the voting lists if they choose not to vote for a certain period of time; (6) school board elections in which persons not subject to the board's jurisdiction are allowed to vote, thereby diluting the voting strength of resident voters; (7) a state form for voter registration which violates the right to privacy and discourages registration; (8) municipal elections in which black candidates were defeated by white candidates through voting irregularities; (9) the extraterritorial powers of a city to tax citizens in areas that have no voice in selecting city officials; (10) election officials who have refused to call referenda to determine whether or not their counties shall have apportionment plans involving single-member districts and (11) the circumvention by white candidates of the authority of newly elected black party officials.

Representation has also been extended to black citizens testifying on behalf of black candidates who were prosecuted criminally for alleged election fraud. Minority citizens in many counties have been assisted by the project in drawing up reapportionment plans for adoption by their local governments.

As a direct result of the project's efforts, single-member reapportionment plans which allow for the election of black candidates have been adopted in Morgan

County, Newtown County and the City of Covington, Georgia; Dorchester and Lee Counties, South Carolina; Pickens County (School Board), Alabama; and the Alabama State Legislature.

In addition to its federal litigation, Voter Law has with increasing frequency resorted to state courts in cases which present strong issues of state law. For example, project attorneys filed an election challenge in state court on behalf of Tobe Harris, a black candidate for city council in Greenville, Georgia. The suit charged that his white opponent had purchased votes and that city officials had openly solicited votes for the opponent in the polling place, had disappeared with the ballot box following the closing of the polls, and had illegally discounted a number of votes cast for Harris. The state judge who heard the case set aside the election, and in the new election last July Harris was elected by 27 votes.

Enormous progress has been made in black voter registration since passage of the Voting Rights Act of 1965. But blacks still do not participate on a basis of equality with other citizens in the political process. In Alabama, for instance, 15 of the 20 counties with the greatest black populations do not have any local black elected officials. In Marion, Alabama, the home of Coretta King, there is no black elected official, even though 60 percent of the town's population is black. The challenge facing the Voter Law project is to work to fulfill the opportunities created by increased black voter registration in the South and to remove state practices and policies which continue to dilute black voting strength.

Blacks are no longer totally excluded from juries, but in spite of successful litigation and recompiled jury lists, they still remain proportionately underrepresented in virtually every jurisdiction in the South. The federal courts no longer tolerate gross racial disparities in jury selection but recent decisions indicate an increased willingness to ignore substantial black underrepresentation on juries, an enduring legacy of racial discrimination in the administration of justice.

Other Southern Justice litigation has included challenges to discriminatory bar admission procedures, to the discriminatory application of state disciplinary proceedings against civil rights attorneys and to the segregation of prisons and jails. The suit against the Georgia Bar Examiners ended in a decision against the plaintiffs, basically for the reason that the adverse racial impact of the bar exam standing alone was not sufficient to make out a denial of equal protection.

Litigation attacking the bar exam in South Carolina has been more successful. The Fourth Circuit ruled last August that, while the bar exam was in general a

valid measurement for bar admissions, two of the four plaintiffs had been the victims of "arbitrary and capricious" grading procedures and were entitled to admission to the bar.

The bar exam litigation, even though it has not succeeded in its challenge to the racial impact of the exam itself, has had a significant impact upon examination procedures and bar membership. For example, all of the plaintiffs in the Georgia litigation, with the exception of those who attended unaccredited law schools, took the bar exam again following the filing of the complaint, and all passed. The bar examiners had changed the method by which the bar exams were graded. Not only did the plaintiffs secure admission to the bar, but since the filing of the complaint the number of black attorneys admitted to practice in Georgia has more than doubled.

In South Carolina, as a direct result of Southern Justice litigation there, procedures involving the review of exams have been changed so that failing applicants now have the right to review their papers and to petition for reexamination.

Southern Justice

Southern Justice is one of the oldest continuing ACLU projects in the South. Its goal is to desegregate the agencies of justice in the southern region by challenging policies and practices which deny blacks the full and equal protection of the law.

Affirmative jury desegregation litigation has been a mainstay of Southern Justice. Through it juries in scores of jurisdictions in the South have been desegregated so that black citizens for the first time have gained meaningful access to jury selection and service. Recent affirmative jury suits have been brought in Sumpter and Talladega Counties, Alabama, and in Walton, Bullock, Stewart, Harris, Telfair, Peach and Burke Counties, Georgia.

In addition to civil litigation, jury discrimination has been attacked in Georgia, Alabama and South Carolina in a number of criminal prosecutions. Experience has shown, however, that courts are more inclined to grant relief in civil than criminal cases, presumably because the remedy in the former entails only the recomposition of lists for future trials rather than retrial of convicted defendants.

Equal Protection

In *Hills* v. *Gautreaux*, the ACLU won one of its most important Supreme Court victories of the past year by opening the door for metropolitan housing desegregation. For more than a decade, the ACLU in *Gautreaux* has fought the segregative public housing actions of the United States Department of Housing and Urban Development and of the Chicago Housing Authority. With violations of federal law repeatedly found by the lower courts, the litigation recently turned to issues of remedy—specifically, whether HUD and CHA, could be required to build public housing in suburban areas beyond the Chicago city limits.

In a surprisingly unanimous decision, the Supreme Court held that because of the federal involvement by HUD it was entirely proper to remedy the public housing segregation in Chicago by ordering desegregated public housing dispersed throughout the metropolitan housing market both within and beyond the Chicago municipal boundaries. Although the Supreme Court did not require such metropolitan dispersal, its opinion in *Gautreaux* opens the door to the conditioning of federal funds upon some form of metropolitan housing desegregation.

The discriminatory use of federal funding was also an ACLU target in Congress. As part of its campaign against the unabated federal funding provided by the Law Enforcement Assistance Administration to discriminatory law enforcement agencies, the ACLU persuaded Congress to enact as part of the Crime Control Act of 1976 the toughest civil rights enforcement provisions imposed to date upon any federal funding agency.

Under the new civil rights enforcement provisions, the LEAA can no longer avoid cutting off funds to discriminatory agencies. A funding cut-off must be initiated by the LEAA upon receipt of a finding of discrimination against a law enforcement agency by a federal or state court or by a federal or state administrative agency. The new civil rights provisions also give discriminated-against individuals a private right of action against LEAA recipients.

In the area of school desegregation, the ACLU continued to win important victories both in the courts and in Congress. In the courts, the ACLU substantially prevailed in the Supreme Court's only decision on school desegregation during the past year, *Pasadena City Board of Education* v. *Spangler*. In that decision, the high court held that the district court was correct in continuing its jurisdiction of the desegregation plan implemented in Pasadena. The high court also held, however, that the Pasadena City Board of Education was not

required to readjust school assignment patterns on a year-by-year basis.

In another ACLU case, *Evans v. Buchanan*, the Supreme Court declined to review the city-suburban desegregation plan imposed upon the school boards in the Wilmington, Delaware metropolitan area.

The ACLU also won desegregation cases in Los Angeles from the California Supreme Court and in Buffalo from a federal district court; and ACLU *amicus* participation in a federal court of appeals helped to sustain the desegregation victory in Milwaukee. In Congress the ACLU helped to defeat or alter a number of bills which would have substantially undercut the civil rights enforcement powers of HEW.

Women's Rights

The Women's Rights project has made a conscious attempt to deal with those lawmaking issues which affect large numbers of working women and which are particularly applicable to poorer women. The project this year continued and expanded its challenge in employment as to what constitutes "women's work," by filing four lawsuits against the military.

The military is one of the largest employers in the United States and is not exempt from the Constitution. Discriminatory practices against women in the military, however, are rampant. In *Beeman v. Middendorf*, the Navy has refused to allow a female customs officer to board a ship to which she had been assigned by Customs because the Navy claimed there were no "suitable accommodations." In *Owens v. Rumsfeld*, the four women plaintiffs allege that they, like hundreds of other women, are trained by the Navy for specific professional occupations and then are denied by the Navy the opportunity to go on board ships to practice their skills. In *Mack v. Rumsfeld*, a number of branches of the military are being sued for their refusal to permit single parents to enlist unless they give up their children for adoption or to foster care.

The same assumptions often held by private employers on the "proper" role of women seem to be held by the military. These assumptions will not be left unchallenged because the military often provides secure employment with medical, housing and educational benefits to women who otherwise would not have the opportunity for advancement.

The Women's Rights project is now nearing a conclusion to a series of cases in the U.S. Supreme Court challenging the

legend of "man as breadwinner." This line of cases, which started in 1973 with *Frontiero* v. *Richardson*, may be concluded with a favorable decision in *Mathews* v. *Goldfarb*.

The *Goldfarb* case, argued in the fall, challenges social security law which provides that the spouse or widower of a female wage earner may only collect benefits on her account if she contributed at least one half of his support. Since spouses and widows of male wage earners receive benefits automatically, the law denigrates the value of the social security accounts of working women.

At the end of the year, the U.S. Supreme Court handed down an adverse decision in a pregnancy discrimination case. In *Gilbert* v. *General Electric Company*, the Court said that denial of disability benefits to female workers disabled by pregnancy or childbirth was not sex discrimination. The 6-3 ruling was a major setback to women's rights. The Court has seriously weakened the Title VII prohibition against sex discrimination, and has legalized what Congress plainly deemed illegal. A concerted legislative approach to nullify the effects of the decision is being planned by a coalition of women's groups, labor unions, and members of Congress.

Abortion

Since the Supreme Court issued its historic decisions, *Roe* v. *Wade* and *Doe* v. *Bolton*, in January, 1973, ACLU affiliates have fought a never-ending battle to preserve and implement the legal right of women to choose to have an abortion. In retrospect, 1976 was a good year for this purpose—several important cases were won, and at least one legislative defeat was turned into a major legal victory.

In July the Supreme Court announced two decisions that ended legal speculation on important issues left unresolved in *Roe* and *Doe*. In *Planned Parenthood of Central Missouri* v. *Danforth* and *Baird* v. *Bellotti*, the Court ruled that states may not constitutionally insist upon spousal or parental consent before married women or minors can obtain abortions. This decision represents a real victory for the ACLU, whose affiliates were prime movers against such third-party consent requirements.

The Court, however, did intimate that some procedure short of an absolute parental veto, authorized for any reason or no reason at all, might be permissible in regard to minors.

This fall Congress passed the Hyde Amendment which would have prohibited the use of federal

money to pay for abortions, except when the woman's life was at stake. Through hard work and careful planning, a coalition of concerned groups, including the ACLU, obtained a nationwide injunction against the amendment on the day it went into effect.

When the district court enjoined the enforcement of the Hyde Amendment, it also granted a motion to intervene as parties-defendants filed by Senators Buckley (C-N.Y.) and Helms (R-N.C.) and Rep. Hyde (R-Ill.), all three of whom had voted for the amendment. The intervenors subsequently sought a stay of the injunction pending appeal to the Supreme Court. The Court, with no dissents recorded, denied the stay.

The injunction will therefore remain in force while the coalition's case, *McCrae* v. *Mathews*, is appealed to the Supreme Court by the government.

The Court is already in the process of deciding two cases which raise a similar issue—whether states may refuse to pay for Medicaid abortions for poor women. Every court that has ever considered the issue on equal protection terms has said that states may not discriminate against women who choose to terminate their pregnancies by abortion while subsidizing those who choose to terminate their pregnancies by childbirth.

The Court will hear a third important abortion case this term—one which will determinate the rights and obligations of public hospitals to perform abortions. *Doe* v. *Poelker*, brought by the ACLU of Eastern Missouri, challenges the antiabortion policies of the St. Louis municipal hospital system. The Eighth Circuit Court of Appeals not only declared such a policy unconstitutional, but imposed an affirmative obligation on the hospitals to provide the staff, facilities and equipment for abortion services for all St. Louis women who desire them.

The appellate court also awarded the plaintiffs several thousand dollars in attorney's fees upon a finding that Mayor Poelker's belief that "abortion is murder" had caused the city to ignore the law requiring public hospitals to permit/perform abortions. The Court's decision on the city's appeal in this case will tell ACLU affiliates how far they can pressure other public hospitals to provide abortion services.

Sexual Privacy

The year 1976 was terrible for sexual privacy. The Supreme Court summarily affirmed a lower court decision upholding the constitutionality of consensual sodomy laws. While not as significant as a decision on the merits, the Supreme Court, action was very damaging. The case had been brought to the Supreme Court by the Virginia ACLU. Simultaneously, the Supreme Court refused to review a case brought by the North Carolina ACLU appealing the conviction of a gay who committed sodomy in his own home with a young marine. The marine had been assigned the mission of entrapping the professed gay by a police officer who testified that he wanted to run the gay out of town. The gay was sentenced to a year in prison.

The ACLU also lost an effort in federal court to secure reinstatement in the Air Force of Sergeant Leonard Matlovich. Matlovich, an 11-year veteran with an outstanding service record, received an honorable discharge in 1975 after he announced that he was a homosexual. The federal court cited the Supreme Court's decision in the Virginia case in ruling against Matlovich.

Heterosexual freedom also fared badly. The sodomy law affirmed by the Supreme Court applied to heterosexuals as well as homosexuals. And, cities and

'... except for them pre-verts.'

states tried to find new weapons to use against street prostitution. Instead of decriminalizing it and taking it off the streets that way, they passed new and unconstitutional loitering laws. Typical was the New York law which was rushed through in time to take effect by the time of the Democratic Convention. It allowed wide latitude for dragnet arrests.

The best thing that happened during the year was the public outcry against the Supreme Court decision in the Virginia sodomy case. It suggests that public opinion is more ready to acknowledge the right to sexual privacy than in the past and allows the possibility of some legislative action to repeal the sodomy laws in the 36 states that still have them. Since other forms of discrimination against gays—as in employment—rest on the criminal sanctions against sodomy, such legislative action is important even beyond the need to spare people from criminal prosecution for private consensual acts.

Juvenile Rights

The ACLU's Juvenile Rights Project continues to be most concerned with those children who have been involuntarily separated from their families or who are otherwise being deprived of their liberty by the state.

Among the fundamental principles we are seeking to establish are the right to family integrity and the requirement that the state demonstrate a compelling necessity before it interrupts a familial relationship. It is a shocking fact that today in the United States poor families are judged daily by welfare workers in the most subjective and casual manner. Too often children are removed from homes summarily and for arbitrary and unnecessary reasons.

ACLU cases have attempted to limit the basis for state intrusion, restrict the method of interference and require due process of law throughout the proceeding. These attempts have largely been successful and landmark ACLU cases are beginning to be cited by courts which are following our lead.

In a related context, the ACLU has been particularly concerned with the plight of children who are already in the state's care. These children are frequently shunted about by indifferent child care agencies who keep the children in extended foster care, moving them from home to home by administrative fiat.

In a landmark victory this year, a three-judge federal court in New York held that before children can be separated from foster parents who have cared for them longer than one year, there must be a due process hearing at which the agency, the child, the foster fam-

ily and the biological family can be heard. The case, *Rodriguez* v. *Organization of Foster Families for Equality and Reform* was handled by the New York Civil Liberties Union.

The Supreme Court has recently agreed to hear the state's appeal of the *Rodriguez* case and its decision will likely settle several important issues regarding children's rights. The decision could establish the principle that the state may not arbitrarily disrupt a child's significant emotional ties with a caring adult.

The ease with which children may end up as wards of the state is highlighted by the fact that in many jurisdictions concerned parents are required by law to give up custody of their children in order to secure for them special services which the parents are too poor to pay for themselves. The Virginia office of the Juvenile Rights Project recently overturned a state law which in this manner violated the rights of poor families with handicapped youngsters who need special education.

At the end of the war in Vietnam, over 2,000 children were "babylifted" to this country to be placed for adoption. Many of the children, however, were not orphans and had not been surrendered for adoption by their families. The ACLU has reunited a number of these Vietnamese children with their natural families. In other cases litigation is still pending.

One important, and telling, restriction on the liberty of children is the nocturnal curfew which prohibits children from being on public streets at night. We have been challenging these laws around the country.

In 1974, Congress passed the Juvenile Justice Delinquency and Prevention Act, an excellent law as far as children are concerned. The statute prohibits the confinement of status offenders in penal institutions (including training schools) under penalty of loss of federal money, effective September, 1977, for state programs. As a result, many states have reexamined their juvenile laws and, in one year, legislated changes we had been unable to obtain through many years of litigation. ACLU affiliates participated in these legislative reforms.

Mental Patients' Rights

In its landmark decision in *O'Connor* v. *Donaldson* in 1975, the Supreme Court said that nondangerous persons could not be confined against their will in mental hospitals. It was one of the most important victories for civil liberties in recent years. The case was brought by the ACLU Foundation and later joined by the Mental Health Law Project (created by the ACLU Foundation together with two other organizations). During 1976 the case continued with efforts to win money damages for Donaldson who had been improperly confined in a Florida mental hospital for 15 years.

During 1976, the Supreme Court began considering another case with potential landmark significance. In *Kremens* v. *Bartley*, the Court will decide whether children alleged to be mentally ill can be confined in institutions by their parents or guardians without a due process hearing. Such commitments are now considered "voluntary" because the parents consent even though the children may object. The case was brought by the Mental Patient Civil Liberties Project, an organization that received support from the ACLU Foundation.

In a New Jersey case, the ACLU challenged intrusive inquiries about psychiatric treatment of applicants for admission to the bar. In a Michigan case, the ACLU challenged denial of employment

as a VISTA volunteer to a woman because she had spent some time in a mental hospital several years earlier.

In New York, the Civil Liberties Union monitored implementation of the decision it had won in 1975 requiring wholesale changes in the treatment of the mentally retarded. The case required continuing court hearings to insure compliance with the detailed standards of care set forth by a federal court decision.

During 1976 the ACLU published *The Rights of the Mentally Retarded*, the latest in a series of handbooks dealing with the rights of people. During 1977 the ACLU will publish a revised edition of *The Rights of Mental Patients*. The earlier edition, published in 1972, has been completely outdated by intervening court decisions and legislation greatly enhancing the rights of mental patients.

Prisoners' Rights

The year began with the most significant legal victory in the history of the ACLU's concern with prison issues. In a case handled by the ACLU's National Prison Project and the Alabama CLU, together with local counsel, the U.S. district court in Alabama entered a sweeping decision and order dealing with the entire state prison system.

The opinion, which was reported on extensively by the national media, declared that the conditions in Alabama's prisons were so oppressive and debilitating that they inevitably made prisoners worse and lessened their ability to successfully reenter society. The court, concluding that this physical and mental deterioration violated both the due process and cruel and unusual punishment clauses of the Constitution, set minimal constitutional standards for the future operation of the prison system.

The court's order included a requirement that all Alabama prisoners be reclassified by court appointed experts to identify those who could appropriately be kept in a range of alternative community programs and facilities rather than closed institutions. It also established a Human Rights Committee to monitor compliance with all aspects of the decision.

Following the National attention that focused on the Alabama decision, the prison project together with a number of affiliates began a broad program designed to replicate that decision and to establish that almost all of our country's prisons, like Alabama's, make people worse. The project and the Tennessee CLU filed a suit against that state's prison system; a similar lawsuit was also

filed in Wyoming, and the project intervened in a case in Rhode Island. In addition, affiliates in Eastern Missouri and Arizona have similar cases pending against their respective major state penitentiaries.

Other significant project victories included an amicus case in which a three-judge federal court declared the Missouri civil death statute (prisoners have no right to sue or contract, etc.) unconstitutional on both First and Fourteenth Amendment grounds. A case involving federal women prisoners ended in a settlement creating standard rules and regulations for the treatment of all federal prisoners who are transferred to, and confined in, state and local facilities. A sweeping decision in another case declared conditions at the District of Columbia jail unconstitutional.

Important results were obtained in two cases in which prison officials discontinued challenged programs during the course of the project's litigation. In a case handled with the Connecticut CLU, the state prison terminated a behavior modification program, which included electric shock "treatment," for sex offenders. In Maryland, state and federal officials closed a program at the state penitentiary, which used prisoners as the subjects of nontherapeutic bio-medical experimentation.

The rights of prisoners did not fare well in the Supreme Court. In a series of procedural due process cases in which the Prison Project was either counsel or amicus, the Supreme Court reversed favorable lower court decisions and held that prisoners were not entitled to counsel in prison disciplinary proceedings, even if they were possibly subject to criminal prosecution arising from the same events, and had no right to any procedural due process before being punitively transferred.

There was a growing appreciation during the year that merely attempting to "reform" prisons was only addressing the tail end of much larger problems with our entire criminal justice system. Any rational prisoners' rights program must include issues such as decriminalization, diversion from the criminal justice system, sentencing reform, and alternatives to incarceration.

A large number of affiliates, often with materials and speakers provided by the project, conducted conferences and proposed legislation on these issues. Project staff wrote articles, participated in television and radio programs, and made more than 50 major presentations to state legislative committees, conferences of governors, criminologists and correction officials, statewide church and citizens conferences and other public and professional groups.

Farm Workers' Rights

The ACLU's South Texas Project, called Oficina Legal del Pueblo Unido, strives to protect and assert the civil rights of the rural poor and farm workers of the Rio Grande Valley through litigation.

Present litigation includes a state court attack on the exclusion of farm workers from the Texas Workers Compensation Act. In a coordinated effort, the Texas affiliate and other groups are working to have the legislature remove the exclusion.

Litigation continues to be necessary to protect persons living in colonias (rural ghettoes) within city limits, principally McAllen, from police abuse, particularly brutality and illegal arrest. The pattern and practice of police illegality is so pervasive that half of the McAllen police force is presently under suit.

Another serious problem facing the rural poor and farm workers is the incarceration of persons found guilty of a criminal offense but who are too poor to pay their fines or court costs. The problem generally occurs because of Texas' use of lay justices of the peace.

A related problem is the requirement that poor people pay the cost of their court-appointed counsel as a condition of probation, thereby effectively denying them early discharge from probation and consequent reinfranchisement and making them more liable to probation revocation.

Local school districts attempt to keep children out of school on the basis that their parents are migrating and the children, although living with relatives, are thus not legal residents of the district. The same rule applies to children who are legally residing in the United States with relatives, but whose parents may be in Mexico.

The project is also involved in an attack on a federal welfare requirement which effectively denies farm workers disability benefits if they are deemed "capable of light work," even though they might not read or write English or possess other light work abilities; and in an ongoing effort to reform the Texas grand jury system which excludes Mexican-Americans, women, young and poor people from service through use of a discretionary model which permits the judge and five handpicked commissioners to select local grand juries.

The project organizes community meetings with elected officials to extend services to colonias (like portable water) or to remove hazards (like drainage ditches) and conducts an innovative education program regarding civil rights in the colonias.

In 1976 the Southern California affiliate's Farm Workers Project fought to preserve the state Agricultural Labor Relations Board, established in 1975 to oversee elections by field workers choos-

ing between the United Farm Workers and the Teamsters.

For the first time in the history of farm labor in the state, free elections were held during the fall of 1975 and winter of 1976. (Field worker elections are held at the peak season for each crop.) Cesar Chavez' United Farm Workers won 68 percent of these elections by February, then the elections ceased. Due to strong opposition by California's powerful grower interests, no money was made available to oversee the 1976 spring and summer elections.

The ACLU launched extensive lobbying efforts in the state legislature and cosponsored an 80-mile march throughout Los Angeles County to gain support for the Agricultural Labor Relations Board. In the 1976-77 state budget, the board received $6.7 million, which should enable it to oversee field elections in the spring and summer of 1977.

The California Supreme Court, in a case in which the ACLU participated, upheld the ALRA's Access Rule, which provides that union organizers may enter grower property during the lunch hour and one hour before and one hour after work for the purpose of talking with workers. Since workers often live on grower property, they can be reached in no other way.

The project's attorneys are now concentrating on the $75 million lawsuit brought by the United Farm Workers against the Teamsters for civil rights violations. The incidents occurred in the Coachella Valley in 1973 where UFW strikers were beaten by Teamsters after the Teamsters and grower signed collusive bargaining contracts.

Bequests to the ACLU Foundation

Bequests to the American Civil Liberties Union Foundation play an important part in the defense of civil liberties. They have often made it possible for the ACLU Foundation to respond to civil liberties emergencies that cannot be met through reliance on the regular income of the Foundation. If you would like to make a bequest to the Foundation, we suggest this form: "I give $_____ to the American Civil Liberties Union Foundation, Inc., a New York Corporation."

If you prefer, of course, your bequest need not be for a specific amount. It may be a percentage of the remainder after all specific bequests have been made. In this way, your bequest to the ACLU Foundation adjusts itself to the size of your estate. Or you can stipulate that your gift to the ACLU Foundation will be effective only if your residuary estate exceeds a certain amount.

Bequests to the ACLU Foundation are tax-deductible.

For further information, write to the ACLU Foundation, 22 East 40th Street, New York, N.Y. 10016.

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SERIES IX

PUBLICATIONS

1974-1978

PART A SECTION 2

CIVIL LIBERTIES

1976-1977